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ABSTRACT

A learner verification and revision (LVR) process attempts to discover difficulties learners experience in using instructional materials and to formulate possible ways of modifying the instructional materials to eliminate the difficulties. It is a means of ensuring useful learner input into the prepublication development and postpublication modification or revision of instructional materials. If LVR is to be done, then there is a need for legal standards concerning both the process itself and other legal relationships affected by the process. Seven specific needs for alternative model legal standards on LVR are identified. These needs deal with protecting the publisher and the educator, controlling the cost of the process, and preventing LVR from becoming a subject of competition for sales among the publishers. The alternative model legal standards (accompanied by interpretive comments) have been written in the form of legislation. It would be possible to use more general statutory language so long as the language was sufficient to empower an enforcement or assessment agency to address all the relevant issues in regulations. Numerous appendixes are included along with a "Harvard Journal on Legislation" reprint "Quality Control for Instructional Materials." (Author/IRT)

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Alternative model learner verification and revision statutes to require or encourage the utilization of learner-performance information in the pre-publication development and post-publication revision of instructional materials used in the public education system.

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PREFACE

Our investigation of the concept of learner verification and revision was the result of an invitation to work on a Learner Verification and Revision Task Force sponsored by the Educational Products Information Exchange. We had already been engaged in the formulation of legal standards for both the selection of educational materials and the handling of biases or stereotypes in educational materials. The issue of instructional materials effectiveness seemed to be a substantial component of the aggregate of "textbook issues" so we agreed to explore the matter.

The principal results of our investigation are the following:

1. There is widespread disagreement and misunderstanding as to the meaning of learner verification and revision.
2. There is very little literature on the subject.
3. The basic purpose of learner verification and revision --improving the effectiveness of instructional materials-- is good.
4. The basic methodology employed--analysis of learner experiences with instructional materials and the consideration of modifications or revisions in an attempt to eliminate learning difficulties identified--taps a potentially valuable source of information for product improvements, that is, learners who actually use the products in the educational process.

5. Learner verification and revision is no panacea, but it makes sense and should prove worthwhile if costs are minimized, other values--such as academic freedom and student privacy--are not offended, and expectations as to what it can do are not overinflated.

6. The existing state of confusion, the need for reasonable certainty, the need for cost control and the protection of other values, as well as several other factors, have created the need for enforceable legal standards on learner verification and revision to clarify the proper duties of affected persons and identify reasonable limits for public expectations.

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INTRODUCTION

A learner verification and revision (LVR) process attempts to discover difficulties learners experience in using instructional materials and to formulate possible ways of modifying the instructional materials to eliminate the difficulties. It is a means of ensuring useful learner input into the pre-publication development and post-publication modification or revision of instructional materials. The process includes, during some of its phases, personal contact with learners, careful observation of the learning process, and follow-up interviews with learners concerning their learning experiences. Thus, it is not just a process which collects the results of achievement tests to determine how many learners have mastered what material. Such achievement test data is sometimes useful in identifying topics that are difficult but it does not, by itself, tend to suggest ways to eliminate the difficulties. The heart of the learner verification and revision process is the gathering of information that might trigger the formulation of ideas to improve the clarity, readability, general communicativeness and over all effectiveness of instructional materials.

The common sense rationale for learner verification and revision is that learners--in addition to experts who have already mastered the subject of materials they are developing and who have a close-up view of the materials--are the potential sources of valuable information regarding ways to improve instructional materials. It is often difficult for a person who has mastered a subject to anticipate the difficulties a newcomer will have in

assimilating the content of material developed by the expert. Trial runs with learners during the developmental phases of instructional materials can reveal ideas for improvements prior to final publication or marketing. After publication, feedback from classroom use and more experimental trial runs with learners may provide useful information as to how instructional material might be improved for a subsequent edition.

THE SCOPE OF LEARNER VERIFICATION AND REVISION

Three points need to be kept in mind as to the scope of learner verification and revision. First, learner verification and revision processes should not be applied to all educational material. Second, learner verification and revision processes employ a variety of techniques at different stages in the development of instructional material. Third, learner verification and revision is not a panacea, there are limits as to what one should expect it to accomplish.

Learner verification and revision processes should be applied to a subset of educational materials, that is, instructional materials--materials expressly created to facilitate the acquisition and development of knowledge or skills. (See Appendix C at P. 3)

Learner verification and revision employs a variety of methods. In the early stages of instructional material development, learner verification and revision activities might properly employ only a few learners and a researcher. Through close observation of the learners' use of prototype materials and follow-up interviews, the researcher might discover ambiguities, trouble spots or other indications of learner difficulties traceable, at least in part, to the design of the materials. Later stages of product development might involve larger groups of learners and product authors, editors or researchers, or class size groups and teachers. Criterion referenced tests, and perhaps standardized tests, might be employed, and teachers' comments might be added to the information gathered.

Though the methods of obtaining feedback might be varied, their common purpose is to pinpoint specific portions of instructional materials which might be contributing to learning difficulties and to attempt to alleviate the difficulties through analysis of their possible causes and experimentation with modified versions. Learner verification and revision is a source of information relevant to product analysis; it provides information which will focus attention on problem areas and which will, hopefully, serve as an additional trigger for publisher ingenuity and eventual product improvement.

Learner verification and revision activities, however, cannot take into consideration all the variables relevant to the success or failure of the learning process. For this reason, learner verification and revision is not a source of absolute guarantees about classroom performance. Similarly, it is not a source of guarantees as to which of two different publishers' instructional materials will perform better in the hands of school students.

Learner verification and revision taps useful sources of information--learner experiences, not just test scores. Diligent, conscientious analysis of this information, along with experimentation with modifications developed utilizing this information, is likely to make any given material better than it would have been had no learner verification and revision techniques been applied.

The purpose of learner verification and revision is to improve all instructional materials, not to try to either determine which of many different publishers' materials is "best", or to attempt to guarantee that use of any instructional material will inevitably produce specified levels of knowledge acquisition. (See Appendices C, D and H.)

THE NEED FOR ALTERNATIVE MODEL LEGAL STANDARDS ON LEARNER VERIFICATION AND REVISION

If learner verification and revision should be done, or if instructional materials purchasers are going to request or expect that it be done, then there is a need for legal standards concerning both the process itself and other legal relationships affected by the process. There are several ways to resolve the issues involved -- hence there is a need to identify alternative approaches. In fact, seven specific needs for alternative model legal standards on learner verification and revision can be identified.

The need to protect publishers from unrealistic, misinformed or conflicting learner verification demands without sacrificing necessary flexibility in research methodology

Two states, Florida and California, have enacted statutes (Appendices A and B) which in general terms mandate "learner verification." To assist Florida and California policy-makers in interpreting these laws, and to assist all other interested persons in reaching a mutual understanding as to the meaning of learner verification and revision, a consultant to the Educational Products Information Exchange (EPIE) has drafted an "Orientation Toward a Definition of the LVR Process" and "Guidelines for Reporting and Assessing LVR Activities" (see Appendix C) based on the work of a representative Task Force convened by EPIE.

Officials in California, however, have drafted an abstract (Appendix E) and proposed guidelines (Appendix F) for learner verification that directly conflict with the basic thrust of the Task Force documents. (Appendix H analyzes the California abstract and proposed guidelines.) Neither the California proposed guidelines nor the California abstract has been adopted. However, the point is that widely divergent views as to the meaning of learner verification and revision have been aired. It is fair to say that some uncertainty exists as to how the Florida and California statutes will ultimately be interpreted.

This uncertainty places an unnecessary hardship on publishers. If publishers are to engage in learner verification and revision, they must do so -- and make irrevocable product development decisions -- during the early stages of the creation of instructional materials, long before their efforts will be assessed by public education system personnel. Unless reasonably specific legal standards are promulgated, publishers will have to guess the expectations of future assessment personnel. They will have no adequate legal protection from unrealistic, misinformed, or conflicting demands for learner verification and revision.

Some learner verification and revision activities that would satisfy the EPIE Task Force guidelines would not satisfy the California documents, and vice versa. It is not reasonable to expect publishers to operate in such an environment. The basic elements of a sound learner

verification and revision process can be identified. Standards for the type of evidence publishers should submit to assessment personnel can be formulated. Because of the time lag between the performance and assessment of learner verification and revision activities, publishers need assessment standards that are reasonably objective and independent of the turnover of personnel in the education system.

This is not to say that publishers should be placed in inflexible methodological ruts by legislation or regulations. The task at hand is to identify those essential methodological elements which define the scope, purpose and expectations of learner verification, and to identify the parameters within which exercise of discretion by publishers and assessment personnel is appropriate. Though disagreement as to the performance of this task might occur, the fact that it should be undertaken and finally accomplished is crucial to the avoidance of confusion, subjectivism and inevitable unfairness.

The need to prevent learner verification and revision from becoming a subject of competition for sales among publishers

Ideally, enforcement of learner verification and revision requirements should be entirely separate from the competitive instructional material purchase decision-making process. Utilization of a learner verification and revision process does not prove that one publisher's material is better than another's. A learner verification and revision process merely tends to make instructional material better than that same material would have been had it not undergone the process.

Selection and purchase committees charged with the task of evaluating competing instructional materials should resist any temptation to prefer one competitor over another on the basis of fine comparison of the publishers' learner verification and revision activities. Proper utilization of a learner verification and revision processs should be viewed as a threshold requirement that all competitors should meet. It should not be viewed as a basis for picking and choosing among competitors who have already passed the threshold.

Although properly informed selection committees might be able to successfully distinguish threshold requirements from proper areas for competitive evaluation of materials, separation of learner verification and revision assessment or enforcement from competitive selection processes would be ideal. Without this separation a publisher who stubbornly argued the adequacy of her or his learner verification and revision efforts, or even litigated the matter and won, would face subtle retaliation for "causing trouble" at the hands of purchasers with power to exercise broad, subjective discretion as to the selection of materials for their education system.

Learner verification and revision assessment or enforcement, furthermore, requires some expertise that might best and most efficiently be developed, and uniformly applied, within a single state-level agency. Selection committees, which frequently have (and we think should have) lay members, would thereby be free of this technical matter. Separation of learner verification and revision assessment or enforcement

from instructional material selection would probably have to be accomplished by new legislation in most states, since an assessment entity would have to be created.

The need to ensure that the cost of learner verification and revision efforts (which of course, are eventually passed on to purchasers) reflect the relative priority of learner verification and revision in the hierarchy of needed educational improvements

Learner verification and revision is no panacea. It is a process worth doing if costs are not uncontrolled. It is quite possible that no additional research and development costs would be incurred by publishers using a learner verification and revision process, if they simply shifted resources away from other field testing activities. Nonetheless, the public should judge how much of its education dollar should be spent on learner verification and revision efforts and publishers should receive some guidance as to how much learner verification and revision they must do to satisfy the public's expectations. Both of these tasks require the establishment of a legal standard that all affected persons can point to to justify either their performance or expectations.

The need to protect other valid interests affected by learner verification and revision -- such as teacher academic freedom and student privacy -- from unwarranted infringement

Learner verification and revision involves the gathering of learner performance data. It also involves, during its later phases, telling teachers to teach in particular ways,

at least during the small amount of time that they are actively engaged in a learner verification and revision process. The gathering of data raises the questions of who will see it and how will it be used. Student performance on reading tests, including school by school or district by district comparisons, is treated as a major news story in New York city newspapers. In the absence of effective legal regulation, the learner verification and revision performances of students might become the subject of unnecessary and misleading public exposure and comparison.

Utilization of a learner verification and revision process raises the issue of whether teachers should be required to always teach in the same manner that was employed during a learner verification and revision process or in other ways suggested by publishers. Actually, the mere publication of a teacher's guide to a textbook raises the same issue. However, because learner verification and revision raises the issue in a new context, because differing views and expectations have been aired on this topic, and because the issue is so important, learner verification and revision should not just casually grow more widespread in the absence of a clarification of the rights and duties of students and teachers who are affected by the process.

The need to provide a proper basis for cooperation between publishers and educational personnel that will minimize disruption of normal academic pursuits and equitably distribute the burdens of implementing a learner verification and revision process among those who stand to benefit by it

Publishers should not be allowed to use learner verification and revision activities as a cover for gaining access to teachers to push sales. Only later phases of learner verification and revision involve teachers and classrooms. Publisher access to classrooms should be on reasonable terms. On the other hand, no sub-unit of the public education system should reap the benefits of publisher learner verification and revision and at the same time insist that the process not involve any of its own personnel. Since everyone will share in the benefits, all should share the obligations. Still, circumstances might arise where persons might properly be excused from participating. Perhaps only volunteers should participate. In any event, publishers should be released from learner verification and revision requirements if the necessary cooperation of educational personnel is not forthcoming. To avoid uncertainty and promote orderly, reasonable cooperation, these problems should be addressed in advance via a scheme of enforceable standards.

The inadequacy of existing legal standards with respect to the above-mentioned needs

Both the California and Florida laws are very generally worded. This undoubtedly contributed to the fact that California personnel developed proposed quidelines entirely different from the ideas developed by the EPIE-convened Task Force. Neither statute provides even the most rudimentary indication of the methodology of, or legitimate expectations concerning, learner verification and revision. The essential problem with this lack of specificity stems from the fact that publishers

must employ learner verification and revision in early product development stages, perhaps years before their efforts will be assessed by personnel in the public education system. If a publisher incorrectly guesses the expectations of future assessment personnel, she or he stands to be eliminated from the California and Florida market. To be sure, this elimination would not occur because of harsh statutory language. It would occur because a competitor guessed "correctly", or was able to somehow persuade the assessment personnel at adoption time that her or his learner verification and revision was "correct" and a competitor's "incorrect." Because the statutes are vague and because they intertwine learner verification and revision assessment with the instructional material selection process, they create strong incentives for publishers to not only try to get on the "inside track" with selection personnel, but also treat their learner verification and revision methodology as a trade secret not to be shared but rather to be used to gain competitive advantages.

The Florida law requires publishers to submit written proof of their efforts, but it gives no indication as to what kinds of records of their activities publishers are required to keep and ultimately produce as evidence. A publisher might make laudatory learner verification and revision efforts but guess incorrectly as to what kind of evidence she or he must produce. Are summary reports sufficient? Or must transcripts of learner interviews be available? Of course, if a publisher guesses incorrectly as to what kind of proof will be deemed

sufficient, the Florida law says that the publisher need merely "satisfy the state instructional materials selection council" that she or he will, in the future, utilize learner verification and revision. The vagueness is bothersome, but the fact that the alternative to proof is the personal satisfaction of a relatively small group of individuals seems to guarantee at least inadvertent subjectivism and unfairness and perhaps foster outright abuse and corruption.

The Florida law contains an ambiguous, and perhaps unwise, clause regarding teacher academic freedom (or the elimination, thereof, depending on how it is interpreted). The clause says that "text revision should be interpreted as including ... revision of the teachers' skill through retraining." This language could be interpreted as requiring publishers to make written suggestions ("text revisions" in teachers' guides) as to how teachers might be retrained. Or it could be interpreted as requiring the publishers to retrain teachers.

Neither the California law nor the Florida law addresses the issue of student privacy. Neither statute requires (California "encourages") educational personnel to cooperate with publishers or explains what happens in the absence of cooperation. Neither statute attempts to limit the amount of learner verification and revision effort a publisher must make to comply with the statute.

The need to identify alternative ways to satisfy the needs identified above

The resolution of issues involved in learner verification and revision assessment or enforcement is not an easy task.

Several different resolutions can be supported with reasoned arguments. The alternative approaches identified below are offered with the hope that discussion of the issues will be at the same time more clearly focussed, yet more wide-ranging. More is involved than just the implementation of a process. Privacy, academic freedom, and monetary trade-offs must be considered. The fact that the assessment of publishers' compliance will occur long after irrevocable product development decisions have been made means that publishers need to have their obligations spelled out in advance in as much detail and with as much certainty as possible without sacrificing necessary flexibility in methodology and assessment. This problem of certainty clashing with flexibility is particularly difficult. The presentation of alternative approaches is intended to facilitate policy-making based on the intelligent consideration of options rather than the simple tallying of yes-no or pro-con responses to a single model solution. It is also intended to stimulate thinking in terms of options so that new options might be generated for the consideration of policy makers.

A final note before we turn to the alternative model legal standards and the interpretive comments accompanying them. We have written the alternative model legal standards in the form of legislation. It would be possible to use more general statutory language so long as the language was sufficient to empower an enforcement or assessment agency to address all the relevant issues in regulations.

ALTERNATIVE MODEL STATUTORY PROVISIONS ON LEARNER VERIFICATION AND REVISION

An Act to provide a learner verification and revision process for instructional materials purchased for use in the public elementary or secondary system of this state.

The legislature of the State of _____ hereby enacts:

- OR -

An Act to provide for evaluation of learner verification and revision processes applied to instruction materials developed for use in the public elementary or secondary education system of this state.

The legislature of the State of _____ hereby enacts:

COMMENTS

1. The phrase "learner-base improvement" could be substituted at every point "learner verification and revision" is written. This would contribute to the charting of a course independent of Florida and California, should that seem desirable.

2. The two alternatives presented above are intended to be paired, respectively, with the two alternatives for Article II, Section 1. The first alternative is for a statute requiring learner verification and revision. The second is for a statute that would simply establish a mechanism for evaluating publisher learner verification and revision evidence submitted on a voluntary basis. We call this second approach the "gold star" alternative (in fond remembrance of the gold stars occasionally won through extra effort on a second-grade penpersonship test or a fourth-grade essay).

Article I-Construction of the Act and definitions

Section 1. Construction of the Act

The definitions set forth in this Article shall govern the construction of this Act.

Section 2. Definitions

A. Instructional material

Instructional material means educational material, or any portion thereof, the communicative content of which is developed for the purpose of facilitating student accomplishment of learning objectives, and includes material developed to guide student use of educational material.

COMMENTS

1. See Appendix C, p. 3-4, for discussion of what is intended to be encompassed by this definition of instructional material.

B. Learner verification and revision

Learner verification and revision means a process of attempting to discover the specific difficulties learners experience in using instructional materials and modifying or revising the instructional materials if there is reason to believe that modification or revision will help to eliminate the difficulties discovered.

C. Publisher

As used in this Act, publisher includes a publisher, manufacturer, her or his representative, or any other person who issues, or offers for sale, educational material.

Article II-Learner verification and revision

Section 1. Pre-purchase proof of learner verification and revision

No instructional material shall be purchased for use in the public elementary or secondary education system unless the publisher submits to the State Department of Education, at a time prior to the purchase of the instructional material determined by the State Department of Education, adequate written proof that appropriate and sufficient use of a learner verification and revision process has been made during pre-publication development and post-publication modificaton or revision of the instructional material. This Section shall not apply to instructional material if the total cost of all of the copies or amounts of the material purchased at any time for use in any part of the public elementary or secondary education system is less than $1000.00.

- OR -

Section 1. Submission of proof of learner verification and revision

A publisher of instructional material may submit to the State Department of Education adequate written proof that appropriate and sufficient use of a learner verification and revision process has been made during pre-publication development and post-publication modification or revision of the instructional material. The State Department of Education shall, within a reasonable time, evaluate the written proof submitted unless the State Department of Education determines that no instructional material purchasing agent of the public elementary or secondary educational system is likely to purchase amounts of the instructional material costing over $500.00. In no case shall the State Department of Education refuse to evaluate the written proof submitted if the proof is accompanied by a written statement from an instructional material purchasing agent of the public elementary or secondary education system that the agent desires to consider purchasing amounts of the instructional material costing over $500.00. Upon evaluating written proof submitted, the State Department of Education shall determine if the proof is adequate written proof that appropriate and sufficient use of a learner verification and revision process has been made during pre-publication

development and post-publication modification or revision of the instructional material. If the State Department of Education determines that proof submitted is adequate, it shall include the instructional material on a list indicating that determination. The State Department of Education shall publish, maintain, and distribute the list free of charge to each and every building in the public elementary or secondary education system where any of the instructional material on the list might be used. The list shall be posted in a conspicuous place where it can be viewed by members of the public.

COMMENTS

1. These two alternative provisions are the two major options presented here. The first requires learner verification and revision. The second (we call it the "gold star" alternative) says that publishers may submit evidence of learner verification and revision for a determination of its adequacy. A favorable determination would entitle the publisher to be included on a list indicating that fact. Publishers could advertise their inclusion on the list. This approach would make learner verification and revision a factor in the selection and purchase process, but, for three reasons, it would nonetheless eliminate some of the major problems and opportunities for abuse that might otherwise exist. The reasons are:

(a) uniform, not varying or conflicting, assessment standards would be applied;

(b) assessment would be by an agency with the resources and power to develop expertise and write clarifying regulations;

(c) an agency would exist to provide information to selection committees and counteract any irresponsible claims publishers might be tempted to make concerning the "superiority" of their "verified" products or their learner verification and revision efforts.

2. The first alternative separates the enforcement of threshold learner verification and revision standards from the competitive (local or state-level) selection and purchase process. The scheme envisioned is as follows: Publishers would negotiate contracts for sales to local or state selection committees as usual. Prior to shipment of the materials, however, the contract would have to be approved by the learner verification and revision enforcement agency according to whatever enforcement provisions are adopted. (See the three alternatives for Article II, Section 3.) The contract would be binding unless the enforcement agency invalidated it pursuant to its lawful authority.

3. The assessment or enforcement agency is the State Department of Education. This is intended to be merely a stand-in reference for whatever agency would be appropriate in a particular state. We would recommend that the agency be reasonably centralized, rather than fragmented, and that it have statewide jurisdiction. Uniformity in enforcement is important if economies of scale and resulting cost saving are to be maintained in the publishing industry.

4. The $1000 exemption in the first alternative is intended to exempt teacher-developed materials, experimental materials and other low-budget materials. The exemption applies only if the all-time, state-wide sales total for particular instructional material is less than $1000.00.

5. The first alternative does not require publishers to produce new editions of their materials, or even issue supplements or interpolations, based on post-publication learner verification and revision efforts. The statute merely requires publishers to apply a learner verification process in the formulation of any revised edition, interpolations or supplements which the publisher desires to create (presumably because she or he feels there is an adequate market for them). It might be possible to require post-publication supplementation, revision-by-interpolation or even new editions based on the post-publication continuation of learner verification and revision. Several questions would have to be answered though. If post-publication learner verification and revision is to be required for the full market life of the material, who should determine full market life, producer or consumer? Who should pay for post-publication learner verification and revision? Should the state force purchasers to buy and use supplements, interpolations, and revised editions, or merely require publishers to produce them?

How should the market or budget-making implications of these decisions be handled? We have formulated ideas for model resolutions of these issues but have not included them here because they are necessarily complicated and because we perceive little interest in them. We would be happy to respond to any inquires, however.

Section 2. Emergency exemption

A publisher or instructional material purchasing agent of the public elementary or secondary education system may petition the State Department of Education for an emergency exemption from the requirements of Section 1 of this Article. The State Department of Education shall grant the exemption for specified instructional material if, and only if, the State Department of Education determines, after holding a hearing, that

(a) no instructional material exists which both complies with Section 1 of this Article and has learning objectives substantially similar to those of material for which the exemption is sought; and

(b) students will start pursuing the learning objectives of the instructional material for which the exemption is sought in the public elementary or secondary education system of this state more than four months prior to the time that instructional material having those learning objectives and complying with Section 1 could be made available for student use.

COMMENTS

1. Should a high school suddenly decide to offer a course that has previously been offered only at the college level, this exemption would accomodate a decision to use college-level texts. Other emergencies might be imagined, such as a sudden need for bilingual instructional materials in a language neglected by American publishers.

2. The exemption creates an incentive for publishers to try to predict trends. The first publisher to use learner verification and revision in a new subject area would receive a temporary market advantage.

3. It is true that a far-reaching, iron-clad conspiracy of publishers could theoretically defeat the Act through massive refusal to do any learner verification and the resulting wholesale qualification of all materials for purchase under this exemption, We do not think this threat is realistic, but we would suggest that anti-trust laws be analyzed or amended if others feel that to be necessary.

Section 3. Adequacy of written proof

The State Department of Education shall determine in each case, according to regulations promulgated by the State Department of Education, whether written proof referred to in Section 1 of this Article is adequate. The State Department of Education regulations may include, but need not be limited to, requirements that the written proof include

(a) copies of instructional material in each of its developmental or final forms to

which the learner verification and revision process was applied; and

(b) indication of any modifications made in instructional material resulting from use of the learner verification and revision process and the reasons for each modification; and

(c) copies of tests and surveys utilized in the learner verification and revision process and the original copies, or photo reproductions thereof, of the responses of those tested or surveyed; and

(d) transcripts of interviews with learners and others conducted as part of the learner verification and revision process; and

(e) educationally-relevant characteristics of the learners involved in the learner verification and revision process.

- OR -

Section 3. Adequacy of written proof

The State Department of Education shall determine in each case, according to regulations promulgated by the State Department of Education, whether written proof referred to in Section 1 of this Article is adequate. Written proof consisting of a thorough report summarizing and describing

(a) the learning objectives of the instructional material; and

(b) the educationally-relevant characteristics of the learners involved in the learner verification and revision process; and

(c) the learner verification and revision techniques employed; and

(d) learning difficulties discovered through the learner verification and revision process; and

(e) modifications or revisions made in an attempt to eliminate the learning difficulties discovered and the reasons why the modifications or revisions are thought to aid in the elimination of the learning difficulties; and

(f) modifications or revisions considered but rejected as means of attempting to eliminate the learning difficulties discovered, and the reasons for the rejections

shall be deemed adequate.

- OR -

Section 3. Adequacy of written proof

The State Department of Education shall determine,

according to regulations promulgated by the State Department of Education, whether written proof referred to in Section 1 of this Article is adequate.

COMMENTS

1. All three alternatives require the enforcement or assessment agency to promulgate regulations as to the type of evidence (not the subject of the evidence) it will deem adequate. Advanced specification of the type of evidence required is necessary so that publishers will know what records to keep.

2. The first two options require the enforcement or assessment agency to act "in each case." The third alternative would allow the enforcement or assessment agency to minimize costs by just randomly "spot checking" a few of the instructional materials sold by each publisher. Other options could be devised.

3. The first alternative empowers the enforcement or assessment agency to require, at its election, quite exhautive proof of a publisher's learner verification and revision efforts. An enforcement agency might wish to write regulations requiring publishers to submit just a summary report, but maintain detailed records available for inspection.

4. The second alternative limits the enforcement agency's power to require exhaustive proof and specifies the elements of an acceptable summary report. The agency is given some discretion, however, since it can insist that a summary report be "thorough," and can write regulations to enforce that requirement. Still, the agency cannot require more than a "summary" report.

5. A state might wish to combine elements of the first two alternatives. It could limit the enforcement agency's normal power to the requiring of a summary report, but allow exhaustive administrative inquiry if the agency has reason to believe that the summary report is, in whole or in part, a fabrication.

Section 4. Appropriate and sufficient pre-purchase learner verification and revision

The State Department of Education shall determine, according to regulations promulgated by the State Department of Education, whether the publisher's use of the learner verification and revision process referred to in Section 1 of this Article, has been appropriate and sufficient. Appropriate and sufficient use includes as a minimum, but is not limited to,

(a) adequate statement of the learning objectives of the instructional material; and

(b) adequate testing of learners, individual interviews with learners, careful observation of the learning process, or other appropriate evaluations of learner performance in an attempt to discover specific difficulties learners experience in using the instructional material and the possible causes of the learning difficulties; and

(c) formulation of ideas for modifying or revising the instructional material in a diligent, good faith effort to develop modifications or revisions that might help to eliminate the learning difficulties; and

(d) determination by adequate analysis or testing whether there is reason to believe that any

of the modifications or revisions developed will aid in the elimination of the learning difficulties discovered; and

(e) modification or revision of the instructional material where it is determined there is reason to believe that modification or revision will aid in the elimination of the learning difficulties discovered; and

(f) repetition of the process described in Subsections (a) through (e) of this Section a number of times sufficient to constitute a diligent effort to improve the instructional material.

No learner verification and revision process shall be deemed inappropriate or insufficient merely because it was performed outside this State.

COMMENTS

1. This Section identifies the basic steps and types of judgements involved in the methodology of learner verification and revision.

2. The requirement of this Section and Article II, Section 1, is that of "appropriate and sufficient" learner verification and revision. "Appropriate" refers to the type of activities engaged in, "sufficient" refers to the amount or scope of the activities.

3. As indicated in the introduction, learner verification and revision processes properly employ a wide range of activities. The type of material and stage of its development are relevant considerations for determining such factors as the number of learners and type of evaluation mechanism appropriate for each learner

verification and revision cycle. An enforcement agency would be well-advised to solicit information from the publishing industry and other experts prior to the formulation of regulations outlining for different types of instructional materials, the parameters within which publishers should exercise sound judgement in the performance of learner verification and revision activities.

Section 5. Cost of sufficient learner verification and revision process

Appropriate use of a learner verification and revision process, the reasonable cost of which exceeds 2% of the developmental costs of instructional material sought to be sold to instructional material purchasing agents of the public elementary or secondary education system, shall be deemed sufficient as well as appropriate. Appropriate use of a learner verification and revision process may be deemed sufficient as well as appropriate, even if the reasonable cost of the process is equal to, or less than, 2% of the developmental costs of instructional material sought to be sold. In any dispute between a publisher and the State Department of Education arising under this Section, a publisher who claims that her or his utilization of a learner verification and revision process was sufficient shall bear the burden of proof as to that issue.

COMMENTS

1. This Section protects small publishers by placing an upper limit in terms of a percentage of developmental costs on the amount of learner verification and revision efforts the enforcement or assessment agency can require. Should an enforcement agency determine that a publisher's efforts were appropriate, but not sufficient, the publisher could submit financial records and other testimony to the agency, or initiate litigation, to obtain a reversal of the determination based on this Section.

2. This Section creates an incentive for publishers to carefully record the actual costs of their learner verification and revision activities and to inform the public as to those costs. The creation of this incentive should eventually result in more informed decision-making as to the relative costs and benefits of learner verification and revision activities.

3. The 2% figure was not the result of any systematic or scientific research. A legislature would be well-advised to hear testimony on the subject before settling on a figure. Compliance with a learner verification and revision statute might entail no increased costs to publishers, just shifting of resources away from other "field testing" activities. One publisher has indicated that a publisher might already spend up to 10% of her or his product development resources on field testing activities. Proponents of learner verification have maintained that, since statistically-significant samples of learners are not required for appropriate and sufficient learner verification and revision, the cost of utilizing a learner verification and revision process is very modest.

Section 6. Cooperation of educational personnel

All persons involved in the public elementary and secondary education system shall cooperate with a publisher in any way that is reasonable and necessary to ensure the implementaion of the learner verification and revision process. The State Department of

Education shall promulgate regulations to enforce this Section.

- OR -

Section 6. Cooperation of educational personnel

All persons involved in the public elementary and secondary education system shall cooperate with a publisher in any way that is reasonable and necessary to ensure the implementation of the learner verification and revision process. Any teacher may request of her or his superiors that she or he be excused from participation in particular learner verification and revision activities. Any student, or her or his legal guardian, may similarly request that she or he be excused from participation in particular learner verification and revision activities. A teacher's superiors shall have authority to grant or deny such requests by a teacher, student, or her or his legal guardian, and shall grant such a request if, and only if,

(a) sufficient numbers of other appropriate public elementary or secondary students or teachers in the educational district are willing to participate; or

(b) the teacher or student who requests to be excused, or on whose behalf such a request is made, has since the beginning of the

current academic year already participated in learner verification and revision activities for a period of time equivalent to three working or learning days; or

(c) the requesting person submits specific written objections to the instructional material used, its learning objectives, or specific aspects of the learner verification and revision process which are sufficiently well-reasoned to support a reasonable inference that participation in the learner verification and revision process would violate the requesting person's sincerely-held principles of conscience; or

(d) the learner verification and revision activities from which the requesting person seeks to be excused, or have her or his legal dependent excused, are unreasonable or not the kind of activities necessary to ensure the implementation of the learner verification and revision process.

The State Department of Education shall, at the instigation of either the affected publisher or a person requesting to be excused pursuant to Subsection (d) of this Section, hold a hearing to determine if a request based on Subsection (d) of this Section was properly granted or denied and to affirm or reverse the granting or denial of the request based on that determination.

- OR -

Section 6. Cooperation of educational personnel; request by publisher

A publisher may request any educational district to:

(a) authorize any student to be excused from her or his normal activities in the public elementary or secondary education system for the purpose of participating in a learner verification and revision process at a place provided by the publisher; and

(b) authorize any teacher to cooperate with a publisher in implementing or participating in a learner verification and revision process involving the teacher and students normally taught by her or him at the place of, and in lieu of, the normal activities of the teacher and her or his students in the public elementary or secondary education system.

COMMENTS

1. The first and second alternatives require educational personnel to cooperate with publishers in implementing learner verification and revision processes. The third alternative must be read with its companion Sections, Section 7 and Section 8. Together they require that learner verification and revision processes involve only students and teachers who consent to be involved.

2. The second alternative provides a number of grounds for being exempted from the otherwise-required duty of cooperation. An enforcement agency in a state adopting the first alternative might look to the second alternative for ideas for regulations. Since Subsection (d), the last of the

grounds for exemption under the second alternative invokes the basic statutory standards of reasonableness and necessity, the state-level enforcement or assessment agency is granted authority to reverse a local determination granting or denying a request for a Subsection (d) exemption.

3. The third alternative identifies two types of publisher requests for cooperation: a request to have students excused from normal activities to participate in activities at the publisher's business (or other place, perhaps the school grounds), and a request to allow a teacher and her or his students to engage in learner verification and revision activities on the school grounds.

Section 7. Cooperation of education personnel; authority of educational district to grant publisher's request

An educational district may grant a request made by a publisher pursuant to Section 6 of this Article.

An educational district may delegate to any of its employees the authority to receive and grant such requests.

Section 8. Cooperation of educational personnel; response to publisher's request

A person entitled to grant a publisher's request pursuant to Section 7 of this Article shall grant a request if, and only if,

(a) the request identifies the time, place, and duration of the learner verification and revision activities involving the student or teacher; and

(b) the request identifies the learning objectives of the instructional material to be used in the learner verification and revision process; and

(c) in the case of a request made pursuant to Subsection (a) of Section 6 of this Article, the student and her or his legal guardian, after being informed of the time, place, duration, learning objectives, and nature and purpose of the learner verification and revision process, consent to the student's participation; and

(d) in the case of a request made pursuant to Subsection (b) of Section 6 of this Article, the teacher, after being informed of the time, place, duration, learning objectives, and nature and purpose of the learner verification and revision process, consents to implement, or participate in, the learner verification and revision process in lieu of the normal activities of the teacher and her or his students in the public elementary or secondary education system.

COMMENTS

1. Section 8 requires the informed consent of the process participants.

2. A student and her or his parents must consent to the student's involvement in non-teacher supervised activities. A teacher is granted authority to consent to the participation of herself or himself and her or his students in a classroom learner verification and revision exercise.

3. Section 7 and Section 8 are intended to accompany only the third alternative Section 6. Neither should be enacted if either the first or second alternative Section 6 is adopted.

Section 9. Exemption from learner verification and revision requirements due to lack of educational personnel cooperation

A publisher may petition the State Department of Education for an exemption from the requirements of Section 1 of this Article based on the failure of educational personnel to cooperate with the publisher in ensuring the implementation of the learner verification and revision process. The State Department of Education shall grant the exemption for specified instructional material if, and only if, the State Department of Education determines, after holding a hearing, that

(a) the publisher diligently sought the cooperation of educational personnel in every educational district in which there were public elementary or secondary students appropriate for participation in a learner verification and revision process involving the instructional material; and

(b) the refusal of educational personnel to cooperate was unlawful [or based on a statutory exemption] and so extensive that an appropriate and sufficient learner verification and revision process

could not be carried out during the development of the material; and

(c) the publisher reported the lack of cooperation to the State Department of Education within a reasonable time after its occurrence became known, or should have become known, to the publisher.

- OR -

Section 9. Exemption from the learner verification and revision requirements due to lack of educational personnel cooperation

A publisher may petition the State Department of Education for an exemption from the requirements of Section 1 of this Article based on the failure of educational personnel to cooperate with the publisher in the learner verification and revision process. The State Department of Education shall grant the exemption for specified instructional material if, and only if, the State Department of Education determines, after holding a hearing, that

(a) the publisher, throughout the development of the instructional material, requested, at least once every six months, of every educational district in which there were public elementary or secondary students appropriate for participation

in a learner verification and revision process involving the instructional material, that the educational district authorize students or teachers to participate in or implement a learner verification and revision process involving the instructional material; and

(b) that so few requests were granted that it was impossible to engage in an appropriate and sufficient learner verification and revision process involving the instructional material and students in the public elementary and secondary education system; and

(c) that the reason for the denial of each request was that no appropriate student, or legal guardian thereof, or teacher in the district consented to participate in a learner verification and revision process involving the instructional material; and

(d) that each of the publisher's requests was not unreasonably restrictive as to the time and place of the proposed learner verification and revision process and that the duration of the proposed learner verification and revision process for any student or teacher was reasonable.

COMMENTS

1. The first alternative, excluding the language in brackets, is intended to accompany the first alternative Section 6.

2. The first alternative, including the language in brackets, is intended to accompany the second alternative Section 6.

3. The second alternative accompanies the third alternative Section 6 and Sections 7 and 8.

Section 10. Teacher academic freedom

No provision of this Article shall be construed to require any teacher -- while the teacher is not participating in or implementing a learner verification and revision process -- to use any method of instruction suggested by a publisher.

- OR -

Section 10. Teacher academic freedom

No teacher -- while that teacher is not participating in or implementing a learner verification and revision process -- shall be required to use any suggested method of instruction developed by a publisher as a result of the publisher's use of a learner verification and revision process.

COMMENTS

1. The first alternative leaves open the possibility of school administrators requiring, or teachers and administrators bargaining over, particular teaching methods. The provision simply leaves existing legal relationships intact.

2. The second alternative says that publishers and school administrators may only attempt to persuade teachers to utilize teaching methods employed in learner verification and revision exercises. Teachers cannot be required to utilize such techniques except during participation in a learner verification and revision process. This provision does not prohibit regulation of teaching methods pursuant to other existing laws or for other reasons, but it does prohibit administrators from requiring teachers to teach in particular ways just because that was the method employed in a learner verification and revision session.

Section 11. Information provided to participants in a learner verification and revision process

A publisher engaging in the learner verification and revision process shall inform, or arrange to have educational personnel designated by the educational district inform, all persons involved in the learner verification and revision process, including the legal guardian of any such person under the age of eighteen years, by letter or other form of communication which protects the privacy of the individual, of the fact of, and the nature and purpose of, their involvement in the learner verification and revision process. The publisher shall so inform, or arrange to inform, the involved persons a reasonable time prior to the beginning of their involvement.

COMMENTS

1. This Section should be included if either the first alternative Section 6 or the second alternative Section 6 is adopted.(The third alternative Section 6 already has notice requirements.)

2. The purpose of this Section is to increase public understanding of learner verification and revision and to afford persons to be involved in learner verification and revision processes a reasonable time to object to their involvement, request exemptions or persuade school officials to cancel the activities.

Section 12. Privacy of process participants

No information obtained by a publisher as to the identity of the persons involved in a learner verification and revision process, other than that of an employee of either the State Department of Education or the publisher, shall be provided to, or available to, any person other than

(a) an employee of the publisher who must know such information to successfully perform her or his duties in the learner verification and revision process or the process of supplying the written proof required by either Section 1 or Section 3 of the Article; or

(b) an employee of the State Department of Education who must know such information to properly assess the written proof required by Section 3 of this Article; or

(c) individuals provided information pursuant to Section 11 [Section 6] of this Article so long as they are provided no other information than that to which they are entitled by Section 11 [Section 6] of this Article

COMMENTS

1. If the third alternative Section 6 is adopted, the references to Section 11 should be changed to refer to Section 6.

2. An enforcement agency which requires detailed evidence of learner verification and revision activities, or which suspects fraud in a particular case, might want to learn the identities of education personnel involved to contact them and see if in fact any learner verification and revision activities ever occurred or if the activities took place in the manner asserted by a publisher.

Section 13. Use of confidential information obtained by publishers; eventual destruction of such information

No employee of either the State Department of Education or a publisher having knowledge of, or access to knowledge of, the identity and performance of persons involved in the learner verification and revision process shall intentionally use that knowledge for any other purpose other than the performance of her or his duties in the learner verification and revision process or the process

of supplying written proof required by Section 1 or Section 3 of this Article. Upon determination by the State Department of Education that the written proof of any portion of a learner verification and revision process is adequate, all records of the identities of the persons involved in that portion of the learner verification and revision process shall be permanently destroyed unless the State Department of Education

(a) determines that significant improvement of instructional material or the technique of learner verification and revision is likely to result from subsequent reinvolvement in a learner verification and revision process of persons who have already been so involved; and

(b) approves within a reasonable time a specific written plan for the type of reinvolvement referred to in Subsection (a) of this Section, such plan being submitted by the publisher within a reasonable time after the above-mentioned determination of adequate proof that, but for the plan, would require the destruction of the identity records. All such plans shall provide for the destruction of identity records upon the

completion of the learner verification and revision activities called for by the reinvolvement plan.

COMMENTS

1. This Section proscribes extraneous use of personal data gathered during learner verification and revision activities and provides that, once an enforcement agency determines that a publisher's evidence of learner verification and revision is adequate, the identity records of the persons involved in the gathering of that evidence must be destroyed.

2. The statute allows an exemption from the record-destruction requirement for specifically-planned follow-up studies, but says that once the follow-up study is completed identity records must then be destroyed.

Section 14. Non-confidential written proof supplied to Educational Districts

A copy of all written proof submitted to the State Department of Education pursuant to either Section 1 or Section 3 of this Article shall be furnished, at the expense of the publisher, to each Educational District using the instructional material which is the subject of the proof. Such copies shall not contain information the disclosure of which is prohibited by either Section 12 or 13 of this Article, but shall in all other respects be identical to the proof submitted to

the State Department of Education. All copies of proof furnished to Educational Districts shall be kept available for free public inspection.

COMMENTS

1. One of the purposes of this Section is to increase public understanding of the learner verification and revision process.

2. Another purpose is to provide teachers who use instructional materials access to information concerning both the development of the materials and how they might best be used.

Section 15. Enforcement

The State Department of Education shall enforce the provisions of this Act. The State Department of Education shall promulgate regulations as required by the other provisions of this Act and may promulgate regulations for the enforcement of any other provisions of this Act.

Article III -- Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this Act which can be given effect without the invalid provision and to this end the invalid provision of this Act is severable.

Carry, L. Ray. Patterns Of Mathematics Achievement In Grades 7 And 8: X-Population. NLSMA Reports, No. 11. (Stanford Univ., Calif. School Mathematics Study Group. 1970, Note - 190 p.)

Kilpatrick, Jeremy. Evaluating A Unified Mathematics Curriculum. (March, 1970, Note - 4 p. From symposium: Problems of Evaluation in Developing Mathematics Curriculum Programs. American Educational Research Ass., Minneapolis, Minn., March, 1970)

Komoski, P. Kenneth. Learner Verification: Touchstone For Instructional Materials? (Educational Leadership, Feb. 1974, p. 397-399)

Komoski, P. Kenneth. Full Text of Remarks of P. Kenneth Komoski; Executive Director, Educational Products Information Exchange Inst. (Educational Marketer Days, June 30, 1934)

Komoski, P. Kenneth. Educational Products Information Exchange Inst., New York, N.Y. (Pub. Date 1st May, 1971. Note - 48 p.)

McLeod, Gordon K. and Kilpatrick, Jeremy. NLSMA Reports, No. 12, Patterns Of Mathematics Achievement In Grades 7 And 8: Y-Population. (Stanford Univ., Calif., School Mathematics Study Group. 1969. Note - 148 p.)

Reading Materials: A - Structional and Instructional. (Educational Products Information Exchange Report No. 62/63)

Fits and Misfits: What You Should Know About Your Child's Learning Materials. (Educational Products Information Exchange Report. National Committee For Citizens In Education, Suite 410, Wild Lake Village Green, Columbia, Md. 21044, March, 1974)

Evaluation Information, Evaluation Instruments And Procedures (Educational Products Information Exchange, 1970-73, Volumes IV-VII)

Holt, Rinehart and Winston's Learner Verification Plans (Report No. 1, January, 1975)

Research And Development In the Educational Materials Industries (Inst. for Educational Development, New York, N.W., 1969, Note - 85 p. Previously announced as ED 032 777)

APPENDIX A

FLORIDA LEARNER VERIFICATION AND REVISION STATUTE

Unofficial; Chapter 233; Courses of Study and Instructional Aids; Compiled by Textbook Services Section, Division of Elementary and Secondary Education, Florida Department of Education; 07/09/74:

"233.25 ... Publishers and manufacturers of instructional materials or their representatives shall:

"... (3) Submit, at a time designated in section 233.14, Florida Statutes, the following information:

"... (b) Written proof of the use of the learner verification and revision process during prepublication development and post-publication revision of the materials in question. For purposes of this section learner verification is defined as the empirical process of data gathering and analysis by which a publisher of a curriculum material has improved the instructional effectiveness of that product before it reaches the market and then continues to gather data from learners in order to improve the quality and reliability of that material during its full market life. Failing such proof, if the publisher wishes to submit material for adoption, he must satisfy the state instructional materials selection council that he will systematically gather and utilize learner-verification data to revise the materials in question to better meet the needs of learners throughout the state. Such text revision should be interpreted as including specific revision of the materials themselves, revision of the teachers' materials and revision of the teachers' skill through retraining, it being the intent of the legislature that learner-verification and revision data shall include data gathered directly from learners and that such data may include the results of criterion-referenced and group-normed tests, direct learner comments, or information gathered from written questionnaires from individual or small group interviews, and not precluding the use of secondary data gathered from teachers, supervisors, parents, and all appropriate participants and observers of the teaching-learning process."

"233.09 ... Duties of each state instructional materials council. -- The duties of each state instructional materials council shall be as follows:

"... (3) Rules and regulations. -- To adopt rules and regulations for evaluating instructional materials submitted by publishers and manufacturers in each adoption. Included in these rules and regulations shall be the following minimum standards:

" ... (a) Provisions which afford each publisher or manufacturer or his representative an opportunity to present to members of the state instructional materials councils the merits of each instructional material submitted in each adoption".

APPENDIX B

CALIFORNIA LEARNER VERIFICATION AND REVISION STATUTE AND TEACHERS' ACCOUNTABILITY STATUTE (STULL BILL)

California Instructional Materials Law; Compiled by Curriculum Frameworks and Instructional Materials Selection Unit; California State Department of Education; Sacramento, 1974:

> "9234. 'Learner verification' means the continuous and thorough evaluation of instructional materials for their effectiveness with pupils.
>
> "9426. Publishers and manufacturers shall, in accordance with rules and regulations adopted by the state board, develop plans to improve the quality and reliability of instructional materials through learner verification. Governing boards shall be encouraged to permit publishers and manufacturers to have limited access to classrooms for necessary testing and observation. Publishers and manufacturers shall provide copies of test results and evaluations made as part of learner verification at the request of any governing board.

EDUCATION CODE 13485

ARTICLE 5.5 EVALUATION AND ASSESSMENT OF PERFORMANCE OF CERTIFICATED EMPLOYEES (NEW)

13485 Intent; establishment of uniform system.

It is the intent of the Legislature to establish a uniform system of evaluation and assessment of the performance of certificated personnel within each school district of the state. The system shall involve the development and adoption by each school district of objective evaluation and assessment guidelines.

13486 Advice of certificated instructional personnel.

In the development and adoption of these guidelines and procedures, the governing board shall avail itself of the advice of the certificated instructional personnel in the district's organization of certificated personnel. (Added by Stats. 1971, c. 361, p. 726, 40, operative Sept. 1st, 1972).

13487 Evaluation and assessment guidelines; elements.

The governing board of each school district shall develop and adopt specific evaluation and assessment guidelines which shall include but shall not necessarily be limited in content to the following elements:

(a) The establishment of standards of expected student progress in each area of study and of techniques for the assessment of that progress.

Appendix B (Contd.)

(b) Assessment of certificated personnel competence as it relates to the established standards.
(c) Assessment of other duties normally required to be performed by certificated employees as an adjunct to their regular assignments.

(d) The establishment of procedures and techniques for ascertaining that the certificated employee is maintaining proper control and is preserving a suitable learning environment.

(Added by Stats. 1971, c. 361, p. 726, 40, operative Sept., 1st, 1972.).

13488 Transmission of written copy of evaluation and assessment to employee; response; discussion.

Evaluation and assessment made pursuant to this article shall be reduced to writing and a copy thereof shall be transmitted to the certificated employee not later than 60 days before the end of each school year in which the evaluation takes place. The certificated employee shall have the right to initiate a written reaction or response to the evaluation. Such response shall become a permanent attachment to the employee's personnel file. Before the end of the school year, a meeting shall be held between the certificated personnel and the evaluator to discuss the evaluation. (Added by Stats. 1971, c. 361, p. 726, 40, operative Sept. 1st, 1972.).

13489 Frequency; areas of employment; unsatisfactory performance; exclusion.

Evaluation and assessment of the performance of each certificated employee shall be made on a continuing basis, at least once each school year for probationary personnel, and at least every other year for personnel with permanent status. The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. In the event an employee is not performing his duties in a satisfactory manner according to the standards prescribed by the governing board, the employing authority shall notify the employee in writing of such fact and describe such unsatisfactory performance. The employing authority shall thereafter confer with the employee making specific recommendations as to areas of improvement in the employee's performance and endeavour to assist him in such performance.

Hourly and temporary hourly certificated employees, other than those employed in adult education classes who are excluded by the provisions of Section 13485, and substitute teachers may be excluded from the provisions of this section at the discretion of the governing board. (Added by Stats. 1971, c. 361, p. 727, 40, operative Sept. 1st, 1972. Amended by Stats. 1973, c. 220, p. -, 1.).

Appendix B (Contd.)

13490 Employing authority defined

For purposes of this article, "employing authority" means the superintendent of the school district in which the employee is employed, or his designee, or in the case of a district which has no superintendent, a school principal or other person designated by the governing board. (Added by Stats. 1971, c. 1654, p. 3568, 6.).

APPENDIX C

ORIENTATION TOWARD A DEFINITION OF THE LVR PROCESS

The LVR Process is a learner-based process for improving instructional materials.

Stated in a more definitional manner: The LVR Process of Instructional Materials is an ongoing effort at the improvement of instructional materials based on systematic feedback from – as the primary source – learners who have used the materials.

In other words, with the LVR Process, publishers decide whether to revise their materials – and specifically *how* to revise them, if they are to be revised – on the basis of data from learners. These data can be collected *from various people:* directly from the learners themselves; from teachers who report their perceptions of learners in their classrooms; from staff members of publishing companies; and from other observers of learners using the materials. Also, these data can be collected *in various ways:* through classroom observations; through interviews with learners, individually and collectively; through interviews with teachers; through structured questionnaires filled in by learners and teachers; through criterion-referenced tests; and so on. And, finally, these data are assessed by publishers and, perhaps, by teachers and others.

It is necessary to stress, because there is evidence of misunderstanding on this point, that *the LVR Process does not guarantee or certify that instructional materials will bring about explicitly predictable results with learners.* In fact, responsible publishers, notwithstanding any field-testing they may have done, do not make such guarantees about their materials, nor, indeed, do responsible buyers expect such guarantees. It is obvious that there are so many variables operating in the learning process that such guarantees cannot honestly be made and, for this reason, ought not be made. [At this point, some amplification, which can be found in Section C of the Appendix, may be helpful.]

Lest there be another sort of misunderstanding about the specific role of the LVR Process in relation to the overall publishing process, it should be understood that publishers, in developing and revising their instructional materials, engage in a number of activities aimed at insuring product quality. For example, accuracy and currency of subject matter are a primary consideration during the development and revision of certain instructional materials; publishers can turn to content specialists in order to insure accuracy and currency of such subject matter. Similarly, when it comes to fair and full treatment of important social issues, publishers can turn to appropriate experts and groups for review and reaction. But when the issues are how well learners understand the subject matter and other learnings dealt with in specific instructional materials, and what particular aspects of those materials might be revised in order to improve the understanding of learners, then publishers must turn to data gathered from learners. Having gathered such data, publishers will be able to identify instructional strengths and weaknesses of a product and to revise, if necessary, specific aspects of a product in order to improve its instructional effectiveness. This learner-based approach to instructional improvement is the specific role assigned to the LVR Process.

It may seem reasonable to assert that all materials marketed for use by learners should be subject to the LVR Process. But because not all materials used by learners have been explicitly designed for the purpose of instruction, there is a need to clarify which materials are candidates for the LVR Process and which are not. First of all, what are *instructional*

materials? One incomplete definition can be tentatively advanced: Instructional materials are those materials which have been explicitly designed to enable learners to achieve specifically stated, or otherwise clearly apparent, instructional intents. An algebra textbook, a filmstrip on the metric system, and television lessons on art history are all obviously instructional materials under this definition and, thus, clearly candidates for LVR. A work like *Macbeth* would not be a likely candidate for the LVR Process, because it contains no explicitly apparent instructional intent. Although *Macbeth* is used in classrooms to achieve certain instructional intents, those intents are brought to the play by the teacher. Yet, a publisher conceivably might want to investigate the suitability of the study of *Macbeth* in a certain grade or to gather data, for example, on affective effects of the play on learners; while revision of Shakespeare's text obviously would not follow, what might be revised in the light of such feedback are the supporting instructional materials: reading guides and manuals used by learners and teachers in studying the play. Also, a modernized or otherwise rewritten version of *Macbeth*, which would constitute a *Macbeth* that is no longer Shakespeare's, could become a candidate for the LVR Process. It seems safe to aver that if a publisher describes materials as *instructional* when they're offered for sale – or if selectors view them as instructional materials – those materials should be considered candidates for the LVR Process.

Therefore, from the perspective of the LVR Process, it is helpful to view the universe of instructional materials as a continuum. All materials used in schools can be placed at some point on this continuum, with respect to the degree of their instructional design and their instructional intents. Some programs, like basal reading programs, have very obvious designs and very clear intents. Others, like the actual text of *Macbeth* standing by itself or a series of slides of great paintings by themselves, may have no obvious instructional design or no clearly apparent instructional intents. Before submitting a LVR Report for a product, a publisher should anticipate the expectation of "substantial LVR," as it were, for products with maximum instructional design and intents. For products of little or no built-in instructional design or apparent instructional intents, a publisher may wish to substitute for substantial LVR a documented statement supporting the notion that the LVR Process does not reasonably apply to those products. Such a supporting statement will perform two important functions: (1) It will enable the publisher to make undeniably clear the nature and intended role of the product, and (2) it will enable the purchaser to assess better the potential uses and instructional expectations of the product.

In summation: As educational materials increase in structure and in the explicitness of their instructional intents, LVR activities increase in importance and in appropriateness; as educational materials have less structure and are less clear in their intents, LVR activities are less important and may even be replaced by a well argued statement that the LVR Process is either impossible or inappropriate with a specific product.

The issues of the selection of learners for the LVR Process and who conducts LVR activities are too important to be ignored at this point, particularly because they can be briefly dealt with. As President Lincoln reportedly instructed his tailor to make his trousers long enough to reach the ground, so publishers should select enough learners for the LVR Process to do the job. A less flippant explanation is given in the following "Guidelines for Reporting and Assessing LVR Activities," in the section treating the description of learners used in the LVR Process. With respect to who conducts LVR activities, the issue should not be an issue because it should be evident that only the publisher should conduct LVR activities. The notion of an outside agency's conducting LVR for a publisher reveals specious reasoning. LVR is not a certification process which aims for some sort of seal of approval from an independent testing agency; LVR is a process for identifying trouble spots (or the absence

of them) and the only appropriate people to engage in it are the people intimately involved in developing the product.

It should not be inferred from anything said above that LVR is in the exclusive domain of publishers. While only publishers can initiate the decision to carry out to completion the LVR Process, the responsibility for LVR certainly does not apply only to publishers. Schools share this responsibility. Whereas publishers accept the responsibility for product development and revision and for the specific techniques to be used in gathering learner feedback, schools accept the responsibility for arranging for the participation of learners and teachers in the LVR Process. If a school expects that a publisher has put materials through the LVR Process, that very same school must be ready to make it possible for the publisher "to LVR" the materials, which includes the working out of logistics and necessary safeguards for LVR activities. Furthermore, schools themselves can take the initiative (as some are now doing) in devising data-gathering techniques, in using the techniques to gather data from learners, and in reporting the data, perhaps with their analyses, to publishers.

In other words, any educational unit – whether an individual classroom, a single school, a school district, or a state – that makes LVR a requirement of publishers must itself make a commitment to LVR. And this commitment, in addition to agreeing to cooperate with publishers, includes taking or delegating the responsibility for assessing LVR Reports from publishers.

The "Guidelines for Reporting and Assessing LVR Activities," which follow, should not be viewed by purchasers as a panacea for the continued improvement of the learning effectiveness of instructional materials. Schools must keep in mind that effective instructional materials require effective use in the classroom. The LVR Process is but one activity, albeit an important one, directed toward the continued improvement of instruction through the development, selection, and use of increasingly effective instructional materials for learners.

GUIDELINES FOR REPORTING AND ASSESSING LVR ACTIVITIES

The purpose of a report on LVR activities is to enable the publisher of instructional materials to provide educators with evidence that a particular product has been – or soon will be – put through the LVR Process as part of a continuing effort to improve its effectiveness with learners. Although a publisher can fashion various LVR models and yet conform to the basic objective of the LVR Process, certain elements in every model are essential. These essential elements, which taken together operationally define the process, are asterisked below and should be addressed in every LVR Report. What is offered below, then, is not an inviolable *form* that all publishers must use or that purchasers demand be used; rather, it should be viewed as a flexible *format* which constitutes a set of guidelines to the publisher for preparing a LVR Report and to educators for reading and assessing such a report.

Descriptive Information on Product

[The publisher should provide "catalog" information on the product, such as title, authors, copyright, medium or media involved, kinds of supplementary components, and so on. The "product" is any kind of material offered for adoption consideration as an instructional material. It should be described as it normally is when submitted to an adoption/selection committee, that is, a six-year textbook series, for example, or a multicomponent (and perhaps multimedia) "system" being considered as one product.]

* Instructional Design

[The "instructional design" of a curriculum product can be thought of as the overall learning plan for the product. The design should be described and the underlying rationale for that design should be stated.

[It is to be expected that a product with integrity of design – a product whose instructional elements are well integrated – will easily be put through a well designed LVR effort. Conversely, a product without an apparent instructional design cannot easily, if at all, be subjected to a cycle of the LVR Process.]

* Intended Learner Outcomes To Be Investigated

[This should be a statement of what the publisher intends the product to accomplish when used with integrity with learners. If such a statement appears in the product itself or in accompanying promotional pieces, a reference may be made to where it can be found.

[It may be that at a particular time the publisher wants to investigate only certain outcomes within the larger scope of intended learner outcomes, in which case this intention should be stated. It may be also that a publisher of a six-year textbook series (with various attendant materials), for example, may investigate selected outcomes of an exemplary portion of the entire program and use the resultant data to guide revisions of other portions of the program; if so, this should be made clear.]

• Conditions of Use of Product

[The publisher should specify the overall instructional setting intended for the product. Basically, this includes a description of what is termed the "target population" and a noting of the kinds and extent of "teacher preparation." The target population is simply the kinds of learners the product is intended for. Characteristics which may or may not be relevant are: grades students are assigned to because of their maturity, not achievement, levels; actual grade levels, particularly with respect to reading achievement; ethnic backgrounds; family and community socioeconomic level; and so on. Teacher preparation involves such teacher-related matters as supplementary teacher materials, inservice teacher education, and classroom preparation.]

• Techniques for Gathering Feedback

[Techniques for gathering feedback from learners may include, but are not limited to, individual learner and classroom observations, interviews, questionnaires, and criterion-referenced tests. These techniques should be designed to gather data both on direct-learning effects and on affective reactions of learners.

[Techniques used in large-scale, field-test validation attempts are not to be confused with techniques used for gathering learner feedback for the LVR Process. Similarly, techniques used to elicit product testimonials for promotional purposes ("I like this textbook very much and so does my class") – as opposed to reactions gathered as a result of questionnaires or interviews, which may be used in promotion pieces – are inappropriate for the LVR Process.]

• Description of Learners Used in LVR Process

[The selection of learners for the LVR Process is not to be confused with a scientifically drawn "national sample" of students required for the validation of standardized tests and for attempts at validation of other materials. Such a "sample" will perforce involve thousands of students. A LVR selection – because the aim of LVR is to identify trouble spots in order to improve materials, not to prove how well materials work – may comprise a handful of learners from the target population or a handful of classes. In fact, in some instances – and the publisher should justify the use of this procedure – a few students might be taken through the LVR Process in the offices of the publisher, unless there are certain conditions of a classroom setting which are necessary and which cannot be approximated in the offices.

[The factor of conditions of a classroom setting suggests the relevant factor of two interrelated bases of product performance subject to LVR improvements, which can be conveniently distinguished as "textual" and "contextual" characteristics. Textual characteristics are characteristics of the materials themselves which learners use (goals and objectives; scope and sequence; provisions for evaluation; and so on); contextual characteristics are characteristics of the setting the materials are used in (the presence or absence of teacher's editions or manuals, or certain other supplementary resources; the teaching/management plan; and so on). Students might be taken to the publisher's office if textual improvements are being sought by the publisher, but they probably should not be if contextual improvements are being sought.

[In summation, the publisher should report: (1) the procedure for selecting learners, (2) the relevant characteristics of these learners, and (3) the rationale for this step.

[Those charged with the responsibility of assessing LVR Reports are urged not to get involved in a "numbers game" – that is, ranking publishers according to the number of learners used in a publisher's LVR activity – because such a ranking is at best unproductive, at worst grossly misleading.]

*** Analysis of Findings**

[After assessing the extent to which a product is and is not as effective as it might be with a selection of learners and after gathering data, the publisher analyzes the data. It is desirable that the publisher make known the analysis of the findings in a LVR Report. It may be, however, that the publisher would consider such information to be proprietary, because revealing it could give competing publishers an advantage; in such cases, the publisher may explain the reasons for keeping the findings and the analysis of the findings confidential, and, with this condition accepted by an adoption committee, release the information only on request. It may be also that the publisher states in a LVR Report a justification for not releasing any information whatsoever on findings, in which case the publisher should also describe – with as much specificity as prudence allows – the kinds of trouble spots identified both within the materials used by learners and in the overall teaching/management plan.

[Here too, those charged with the responsibility for assessing LVR Reports should understand the competitive nature of educational publishing, and they should be influenced by the reasonableness of the report that the publisher does provide.]

*** Specific Improvements Made**

[The analysis of findings enables the publisher to identify exactly where specific changes should be made, both textual and contextual changes. Improvements can involve aspects relating to learner materials (textual), such as verbal or visual communications, manageability, appeal to learners, goals and objectives, scope and sequence, various kinds of bias, motivational elements, directions to learners, activities for learners, and the congruence of product elements. Improvements can relate to teaching aspects (contextual), such as classroom preparation, record-keeping provisions, teaching design, and inservice education.

[As an ideal component of a LVR Report, the very in-house record of changes compiled by the publisher – including, perhaps, an annotated version of the product used with the selection of learners – might be made available by the publisher, on special request, for examination by an adoption committee.

[Once again, however, the proprietary nature of changes made may constrain a publisher, in which case the reasonableness of what the publisher does report is itself a factor in assessment. Here, though, even more is involved than what was noted above. A publisher may fear that citing a large number of changes might be an adverse reflection on the product and the publisher. Then, too, an unscrupulous publisher might be tempted to develop an intentionally shoddy product to demonstrate, through the LVR Process, a substantial quantity of improvements.

[It is, therefore, up to those assessing LVR Reports to be conscious of realities constraining – and of apprehensions cautioning – a responsible publisher, and to be mindful of trickery tempting an irresponsible publisher.]

Background and Future of Product

[The publisher should briefly describe any part of the product's history that might be relevant and helpful to a full understanding of the publisher's LVR efforts with the product. Also, the publisher may want to describe plans for future LVR efforts with the product, although the publisher would want to consider that a premature revelation of plans might give competitors an advantage.]

Person to Contact for Clarification, More Detail, or Updated Information:

Name_____ Position _____

Company _____ Division _____

Address _____

Telephone _____

21 April 1975

Memorandum to: P. Kenneth Komoski
Kenneth E. Baranski
EPIE
463 West Street
New York, New York 10014

ATTACHMENT #1

1975 APR 30 AM 11:35

From: Sterling P. Davis
Guidance Associates

To your memorandum of March 31, 1975 I am responding individually. Upon careful consideration, I find none of the responses you solicit acceptable. They all lead one to believe that Draft #5 of the LVR guidelines has substance and relevance in publishing and teaching and learning... at least according to the varying approbation or disapprobation of all those who attended a National LVR Task Force meeting. You are really asking us what we thought of the dinosaur who walked proudy across the plains today, and not if we saw the dinosaur.

The dinosaur's pride I happened to miss, along with the dinosaur; I also missed the improvements in Draft #5 of the LVR guidelines. I find the whole LVR undertaking preposterous. It rears its head amidst EPIE inferences that educational publishers often do a bad job and that they have done a bad job for some time. It tampers grotesquely with the conventional notions of validity and verification in a fallacious appeal for workableness and authority. It is on the central issue of verification that the LVR doctrine falls apart. We must forsake not only scientific method but the precious Aristotelian distinction between the particular and the universal. This reason alone, I should think, dooms the LVR idea to extinction. As an appeal for authority too, it looks to educators and state legislatures to mark its efforts, while they, quite properly, look back with open minds, hoping that LVR will insure better quality teaching materials. It makes so much of feedback from the learner (in Draft #5 practically any old learner will do) that, quite incredulously, the learner dwarfs the teacher.

The wave of consumerism over educational publishing, let loose by EPIE, is as irresponsible as it is opportunistic. Among large and small publishers, I find the state of the art of making and revising educational products far ahead of the formalistic pretensions of the LVR guidelines. The marketplace's judgment is quite final.

We have so many institutions in America over which the individual has virtually no control that it seems to me important to nip in the bud the LVR concept, already well nourished in the soil of casuistry, lest it become another glob of bureaucracy with which to contend. Neither publishers, nor teachers, nor students need another rubber stamp. And in these depressed times, educational salesmen can scarce afford to go dinosaur-watching.

ATTACHMENT #3

Texas Education Agency

201 East Eleventh Street
Austin, Texas
78701

• STATE BOARD OF EDUCATION
• STATE COMMISSIONER OF EDUCATION
• STATE DEPARTMENT OF EDUCATION

April 11, 1975

Mr. Ken Baranski
The Educational Products
Information Exchange Institute
463 West Street
New York, N.Y. 10014

Dear Ken and Ken,

This is in response to draft 5 of LVR guidelines. Unfortunately I have not had a lot of time lately to attend to this. I did however, ask a few other consultants to read these and give me their thoughts. In the midst of a letter to you I received your phone call and was pleased to have a few more days to read the document again and await any further response from Texas Education Agency people. However, I received no other input.

I did not have many comments to make this time, probably because, first, I have reacted just to the document and not the philosophies, disagreements, and other environmental factors surrounding LVR, and second, because I think the document is much better than previously.

I still think the educational consumer must be responsible for clarifying the criteria of LVR and there is still going to be much confusion about what LVR means. But this document should help further the concept, put it in perspective, and promote a better foundation for understanding.

I expect some forthcoming proclamations for Texas textbook adoptions will ask for evidence of learner based feedback with the materials. Over a period of time we will likely develop more precise criteria for evidence - in conjunction with publishers.

I feel these guidelines are a good start and over a period of years of revision we in education, both seller and consumer, will come to understand LVR.

You must regard my comments and support regarding these guidelines as representative of my opinion, not the Texas Education Agency, even though I received no negative comments on the document either from Mr. Lipscomb nor Dorothy Davidson.

Sincerely yours,

Gary Haseloff

Gary Haseloff, Chief Consultant
Division of Instructional Resources

GH:dlr

ATTACHMENT #4

EDUCATIONAL MEDIA PRODUCERS COUNCIL

3150 SPRING STREET
FAIRFAX, VIRGINIA 22030
(703) 273-7200

1975 MAY -2 AM 11:27

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Glendale, California

April 30, 1975

Mr. Kenneth Komoski
Executive Director
The Educational Products
Information Exchange Institute
463 West Street
New York, New York 10014

Dear Ken:

At a meeting of the Board of Directors of EMPC on April 14, 1975, the Fifth Draft of EPIE's guidelines for "learner verification and revision" was reviewed and discussed. The representatives of EMPC who sat as unofficial observers/participants during the Strand I, Strand II, and Plenary Sessions expressed their views to the Board through Suzanne T. Isaacs, a Director of EMPC and Chairwoman of EMPC's Committee on Media Evaluation.

The Board decided that option Three (3) in your March 21 memo best convey's EMPC's position on these guidelines. That is: "we are totally dissatisfied with Draft #5 of the 'LVR Guidelines' and wish that our dissatisfaction, as expressed by the points outlined below, be appended to the guidelines when they are distributed to all the interested parties."

The shortness of time between the submission of Draft #5 and the need to render a decision does not permit a full explanation of our reasons. This fuller explanation will be forthcoming. In the meantime, EMPC wishes to make the following points:

1. EMPC supports the use of appropriate evaluation techniques to determine the effectiveness of instructional materials. However, there are a number of formative and summative evaluation methods currently available. EMPC feels it would be premature to identify, formalize and support something called "the LVR process" to the exclusion of all other evaluation methods. We feel this way for several reasons:

A. There is a serious question about whether we can generalize about a positive relationship between formative evaluation and product improvement. Neither the "LVR process" nor any form of evaluation has demonstrated this.

B. No single evaluation process can guarantee learning in all learning environments.

C. EMPC would mislead educators and its own members by even hinting that one system or process of evaluating instructional materials is superior to any other. Adoption of this position could lead to the very errors in selection of instructional materials we all are trying to avoid.

D. The interests of learners, educators, researchers and publishers are best served by using divergent modes of evaluation.

E. Before adopting or supporting any process such as "LVR", it is necessary to show that it works; that it demonstrably improves instructional materials. Until this is done, we need to continue using the formative and summative evaluation processes which are already in existence and which are continually being improved by educational researchers.

F. The term, "learner verification and revision", really clouds the issue that what we are talking about is formative evaluation with some summative evaluation. EMPC feels it is necessary to work on improving formative and summative evaluation rather than creating a new term.

G. There is no hint in Draft #5 that the ultimate decision to purchase and use instructional materials rests with the professional educator and not with the publisher telling the professional educator what to think.

2. Even as formative and summative evaluation methods are being employed and improved by researchers and publishers, instructional materials are already subjected to possibly the most vigorous forms of testing. Namely, (a) "previewing" and "on-approval purchasing", and (b) actual classroom use. In the former case, educators may take any materials available into their classrooms and determine if they work with their

student population. The educators do not have to rely on the word of the publisher about how well the materials worked with some remote student group. In the latter case, an even more stringent process is used. Once in the classroom, the materials one used by professional educators with large numbers of students in the actual environment for which the materials were intended. They are re-used, re-ordered or discarded on the basis of the results achieved. Since the environment changes from student to student, class to class and school to school, this is the most empirical process possible and has provided the American schools with the widest variety and choice of instructional materials in the world.

3. Unless and until the "LVR process" described in EPIE's Draft #5 is itself verified, EMPC is concerned that it can be misleading and damaging at the state and local level. The member companies of EMPC recognize that educators require as much flexibility in evaluation of materials as producers need in creation of these materials. The introduction of "learner verification laws" does nothing to change the fact that educators must always be responsible for evaluation of materials which satisfy requirements of their own unique teaching situations. The EMPC calls for a re-evaluation of the existing legislation in California and Florida and urges any state and local system now contemplating "learner verification laws" or policies to seriously examine the experience in California and Florida before adoption of such laws and policies. Laws should be the last in a long series of steps taken to improve evaluation knowledge and techniques. EMPC commits itself to assisting their colleagues in this process.

4. Finally, the EMPC Board of Directors feels that the guidelines do not fairly or thoroughly reflect the serious doubts raised by Task Force participants about "the LVR process."

Even though EMPC cannot accept Draft #5, we believe our goals and yours are the same -- better instructional materials for learners and educators. We both need to continue to work on this matter with these goals in mind. Thank you for asking for our reactions and permitting us to sit as unofficial observers/participants on your Task Force.

Sincerely,

Daphne

Daphne Philos
Executive Director

DP/n

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
NATIONAL INSTITUTE OF EDUCATION
WASHINGTON, D.C. 20208

ATTACHMENT #5

1975 APR 22 P 1:25

To : Kenneth Komoski

From : Susan S. Klein
School Practice and Service Division
Office of Dissemination and Resources

(NIE Representative to the National Task Force on Learner Verification and Revision)

Subject: Statement of Reservations on Draft #5--3/21/75 of the LVR Guidelines

The comments that follow reflect my views and the views of a few other NIE staff members who took the opportunity to comment. (Draft #5 of the LVR Guideline was circulated to all NIE Task Force Leaders so that interested persons in the task force could contribute to this NIE response.)

We were generally satisfied with the introduction, orientation, and appendices but felt that the actual "Guidelines for Reporting and Assessing LVR Activities" need some major immediate revisions prior to more extensive exposure and that criteria for adequate or minimal adherence to the guidelines need to be suggested and explained. Thus, we checked response choice "b" and are expressing our praise and reservations.

PRAISE

We think that EPIE has been quite responsive in incorporating the ideas of the diverse constituent groups which it invited to participate in the National LVR Task Force. Draft #5 also made progress in putting the LVR activity in perspective regarding major purposes (continued product improvement instead of product quality assessment) and complementary product improvement activities (rational instructional design, care to promote social fairness, etc.). As R. Chesley from the NIE/ODR staff noted, "The process (LVR) described leaves a great deal to be desired and has a number of loopholes as mentioned (in following discussion). At the same time, it is probably better than not imposing any check on the material quality."

RESERVATIONS

Orientation Toward a Definition of the LVR Process

1. Perhaps "publishers" should be defined broadly or used along with other terms such as "producers" or "developers." It is likely that many instructional materials developers or producers who do not consider themselves publishers would also find it beneficial to use LVR Guidelines.

2. Although progress has been made, additional emphasis can be placed on putting LVR in perspective relating to product purposes. (p. 1) It should be noted that (1) LVR does not guarantee that products will be effective with learners, but is apt to increase the potential for this effectiveness by identifying some product deficiencies and (2) LVR does not generally address or claim to improve other dimensions of product quality such as cost effectiveness or social fairness (which may not be related to learner effects).

3. We think that publishers should make assurances and claims about the quality and general predictive features and effects of their products when the products are used as specified. This consumer information is needed and desired. We agree that LVR activities and information won't generally address itself to this issue. (p. 2)

4. What might happen if the publisher states that the LVR process does not reasonably apply to the products, but the potential purchaser thinks otherwise? (p. 4)

5. We agree that it is most likely that a producer will conduct LVR activities, but feel that evaluation data generated by users or external evaluator sources should also be used if available. These additional sources may be especially important in postpublication or other revisions performed by the producers. It is also possible that users could revise or adapt the materials if they receive the appropriate legal permissions. (You may have said some of this on p. 5 and 6, but some of your statements appear contradictory.)

6. If educators or others are to assess LVR reports common minimal criteria should be suggested. (p. 6)

Guidelines for Reporting and Assessing LVR Activities

It may be most feasible to consider several of your categories as "catalog" information. These categories included: "Descriptive Information on the Product," "Instructional Design," and "Conditions of Use of the Product." This catalog information would be of general interest to future product selectors whether or not they are interested in more detailed information on LVR, product effectiveness, social fairness, practicality, costs, etc. Desired information on categories such as instructional design should be clarified.

The other categories could spell out the details of the LVR process in a supplemental LVR report. These categories and the detail requested seem to address two question areas:

1. Did the producers use an adequate rational procedure to collect feedback from appropriate learners, etc. and then make adequate revisions? This seems like the most important LVR screening question and is addressed by "Intended Learner Outcomes to be Investigated," "Techniques for Gathering Feedback," "Description of Learners Used in LVR Process," "Analysis of Findings and Specific Improvements Made," and "Background and Future of Product."

2. The second question is more of a research question to collect information to identify commonly needed types of revisions. Producers should not be forced to supply this information in detail unless it is needed for "1" above or for definite research projects. There should also be some attempt to deal with multiple feedback and revision cycles. Details on "Analysis of Findings" and "Specific Improvements Made" are likely to be helpful in product improvement research. Would findings such as "side effects" which are not related to intended learner outcomes be investigated? The first sentence under the "Specific Improvements Made" category is misleading. Producers can not always identify exactly where specific changes should be made by analyzing the findings although it does help if fine grain "item analysis" type data is examined rather than class mean gain scores.

cc: C. L. Hutchins
Senta Raizen
Robert Chesley
Art Wise
Peter Briggs

ATTACHMENT #6

May 10, 1975

Mr. P. Kenneth Komoski
The Educational Products Information Exchange Institute
463 West Street,
New York 10014, New York

Dear Mr. Komoski,

In response to your request for an evaluation of the Draft #5 of the LVR guidelines, I will answer as an individual. Although I attended the task force in New York - Strand II - in January as a member of the National School Board Association, it is their policy that individual school board members speak as only one representative and not as representing the official position of the NSBA.

I have made my report to the NSBA and have forwarded to them subsequent copies of the drafts as they have been refined.

To choose between a, b, or c as outlined in your letter of March 21, 1975, I would select (b) -

(b) I am not completely satisfied with Draft # 5 of the LVR guidelines and ask that the statement of my reservations which I am attaching, be appended to it when it is distributed to all interested parties.

To summarize my opinion or objections to the LVR process and guidelines, there are four points I would like to make.

1. The concept that instructional materials should be tested on students or learners themselves to see if the students find difficulty using the materials is a good one. Perhaps I was wrong in my earlier assumption the responsible publishers did try out their materials on the user-learner before release to the market place. As with anything, the true test of how well the LVR process is really attempted and how legitimate the results are as outlined or stipulated on the reporting format, depends ultimately upon the integrity of the publisher and the sample group of learners used. In my opinion this process can produce better instructional materials or it can produce a very expensive process for all with increased costs to the consumer and very little tangible improvements that would not already have been forthcoming.

2. There is a dual responsibility between the publisher and "those charged with the responsibility of assessing the LVR reports" (as described on page 9). Here the integrity and the reliability of the publisher is important as well as the purchaser of the materials understanding fully what the LVR process is supposed to evaluate - what it can do and cannot do.

This leads to my main reservation of the LVR process. Unless individuals who use the LVR process, both publisher and purchaser know and understand what the LVR process is supposed to do, its goals, and its limitations, the "purchasers" will tend to expect more out of the process than it is designed to do, or purchasers will assume that certain results will be forthcoming. A quick and superficial mental translation by some individuals of the meaning of "learner verification and revision" can mean that if this process is used and materials are sold with this supporting data, then "students will Learn - it literally verifies that students will learn."

I make the strong suggestion that Appendix - Section C not be the last page of the document, but that it be incorporated at the very beginning in a concise introductory paragraph that defines LVR and includes the clarification and the three points on page 16.

3. The concept that we must not give students or learners any materials that they find difficult to use, or offensive or prejudiced in any way, can lead to mediocrity of educational materials although this risk can be minimized. One problem that can be anticipated as this process grows in acceptance is that there will be an increase in the diversity of pressure groups and special interest groups asking that the materials be LVR'd to reflect their particular area of concern.

The statement on page 6, "If a school expects that a publisher has put materials through the LVR process, that very same school must be ready to make it possible for the publisher to "LVR" that material...." This can work two ways. If a school district wants the LVR process, it is unfair to ask other schools to "carry the burden" (if there is one) of using their classrooms, students, teachers, time, etc. in this testing process. Also if one school district wants the LVR process to see how effective the materials are, the resulting data might be more meaningful if tried on their particular type of student body, i.e., materials LVR'd on a metropolitan urban classroom might have different results from a rural midwestern student population. Different sections of the country or different student body compositions might require more than one LVR process to satisfy that area. This goes back to the basic question of the size of the sample and the type of student/learners tested.

Each year the school district I represent purchases thousands of items from text books to lab equipment to counting sticks. Where is the line drawn between "instructional material" and a supply item. Some distinctions are easy to make, but I suggest that on other items there could be a real question - is this an instructional material item or a supply item.

The students are the ultimate consumer of our entire educational process and the materials and teaching staffs are provided to bring about the greatest growth possible in skills and knowledge. These "learners" should have the best materials and equipment we can devise and design and place in their hands at costs that are as reasonable as we can make them. Therefore, if this process can enhance this goal, then it should become one part of the process of selecting and evaluating instructional materials used in our classrooms. But, speaking as one school board member upon whom the ultimate responsibility falls to find the funds to balance all these needs, the add-on costs of the EVR process must indeed prove to be worth the dollars invested by the publishers and ultimately paid for by school districts in the purchase price of the materials.

Sincerely,

Marilyn Langdon

Marilyn Langdon
School Board Member
Racine Unified School District # 1
Racine, Wisconsin

Home address: 1032 North Osborne Blvd.
Racine, Wisconsin 53405

Association of American Publishers, Inc.

...ew H. Neilly, Jr. Chairman
...mond Hoops President
Austin J. McCaffrey Vice President

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May 1, 1975

Mr. P. Kenneth Komoski
The Educational Products Information
Exchange Institute
463 West Street
New York, New York 10014

Dear Ken:

Thank you for sending the fifth draft of the Guidelines developed by the Task Force. The Research Committee of the AAP continues to seek opportunities to work within the publishing industry and the education profession to develop greater understanding and steps which can be taken to improve the quality of instructional materials.

In recent months, we have had the opportunity to meet in review sessions with appropriate representatives of the California Textbook Commission, California State Board of Education, members and representatives of the California State Department of Education. Members of the Committee have participated in both trade association workshops and in the annual meeting of the Association for Supervision and Curriculum Development. This continuing activity is consistent with the wish of AAP to "continue to be responsive to various requests from adoption units and independent agencies who wish to meet with representatives of the industry," as indicated in Dr. McCaffrey's letter to you on September 24, 1974. Consistent with that letter and the original position of the AAP School Division Executive Committee, we must respond to your letter of March 21, 1975 by declining to indicate any one of your three options outlined. Rather as we stated in our September 24 letter, we feel we should "maintain AAP's role as an independent industry-wide association free to work with national, state and local agencies on validation and learner verification as each occasion requires." There are certain reservations that each member has as to both the content and the concept of LVR as expressed by draft five. I am sure that should they feel that clarification of their individual feelings are important in improving education, they will individually communicate these feelings to you.

more

DIRECTORS: Andrew H. Neilly, Jr., Chairman John Wiley & Sons, Inc. Jean D. Manley, Vice Chairman Time-Life Books Harold T. Miller, Secretary Houghton Mifflin Company
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Finally, as our industry position paper stated, we continue to feel that learner verification and revision must be considered only within the context of total materials development and selection process. That position paper starts by recalling that American publishers have always assumed responsibility for developing effective learning materials and concludes with the important observation that, "The ultimate guarantee that publishers will continue to produce higher quality materials is the fact that educational publishing is highly competitive. Excellence is required in product development in order to produce materials that will be accepted by professionally trained educators and used successfully by students."

Sincerely,

James R. Squire
Chairman
School Division

JRS:sf

cc: Research Committee

HOLT, RINEHART
AND WINSTON

CBS Inc., 383 Madison Avenue
New York, New York 10017
(212) 688-9100

ATTACHMENT #8

June 6, 1975

Mr. Kenneth Komoski
Executive Director
The Educational Products
Information Exchange Institute
463 West Street
New York, New York 10014

Dear Ken:

In response to your invitation to comment on your LVR guideline statement, I elect to choose option (c): I am totally dissatisfied with draft #5 of the LVR guidelines and wish that my dissatisfaction, as I have expressed it in the attached statement, be appended to it when it is distributed to all interested parties.

During the past two years, Holt has commited itself to an investment of time and resources to develop, evaluate, and implement a workable model for the collection of data from the people using its programs, both learners and teachers. In the 1974-75 year, our data collection efforts have brought us into contact with over 100 schools throughout the country. Our concern with the EPIE guidelines is that of a committed participant in the learner-based research and evaluation process.

Somehow or another what promised to be a contribution to the improvement of education has become so confused that the impact of the "guidelines" will be more negative than positive . . . and that's a shame. Also it is a tragedy because it didn't need to turn out that way. Let's start with some fundamental elements:

1. Improvement of education is the overall goal.

2. The quality of instructional materials, as well as many other variables, i.e., teachers, facilities, support of parents contribute to achieving the overall goal.

3. Producers/developers/publishers of materials have a responsibility to produce better materials to help achieve the goal.

The issue then comes to, "How do publishers achieve this objective?" The "guidelines" seem to offer an answer, not to that question, but rather,"How should publishers responsibly develop better materials?" Oh, I recognize that the statement warns the reader several times that "LVR" is not a panacea but that's in one breath, while everything else says, "This is the way." And to make certain that no one misses the point the guidelines clearly suggest that if a publisher fails to follow the way, then those materials are unworthy of purchase. (Oddly, EPIE warns the reader to watch out for some publishers who do provide data in the suggested format for they may be "unscrupulous" or using "trickery".)

The commitment to a somewhat disguised, "the way"; the continued commitment to an incomprehensible label "LVR", seeming to prove once again that created terms that don't improve communication deserve to be discarded; the exploitation of human behavior to promote undue suspicion toward profit making companies (some of our stockholders would be amused with such a label); the total absence of responsible indication to the reader that if "the way" is implemented it will result in significantly higher costs of materials and in a reduction of the number of programs published (thus making development of materials possible for the major publishers and in turn eliminating competition) - all of this adds up to perhaps, a well-intentioned document that builds expectations which cannot be readily realized.

The question which comes to mind is, who has implemented, evaluated, and "verified" EPIE's LVR process? We know that our own model requires ongoing assessment and adjustment; how workable is the EPIE model? I suspect that EPIE, like the Publishing Industry, can make no guarantees. The state of the art of evaluation and testing limits us all. The EPIE guidelines assume the availability of instruments for collecting data from learners. Some data can be collected informally, but as yet, outside of achievement or criterion referenced testing, not very precisely or professionally. The simplest method, observation, is prohibitive in cost unless it is limited to a few sets of students within a limited geographical area. While attitudinal measures are being developed, their scope is often limited and many are still experimental.

Now, let me say that concern about development and improvement of instructional materials is a valid one. Materials, like almost every other thing in life, can and should be better. Publishers have the central responsibility for building better materials. Such a responsibility includes the use of research at many levels - curriculum content, organization, manageability, and motivation. Inherent in the publishing process is the marshalling of resources to assure successful use. As EPIE rightfully indicates, children must be involved in this process for they are in most cases the final users. I say in "most cases" for there are many elements of an instructional material program which are directed towards the teacher who in turn is in fact the "delivery system". Thus the success of a total instructional system is tied to materials/child;, teacher/child, and/or teacher/materials/child relationships. Research designs weighted exclusively to single relationships fail to provide adequate information to construct, or revise materials.

Recognizing the state of the art of research and measurement generally and research on instructional materials specifically it seems to me that review committees would be better advised to begin with more reasonable questions than the guidelines propose. I say "reasonable" for I don't think anyone can reasonably respond to the present format without generating disappointment and frustration.

Let me suggest two core questions:

1. Publisher, how did you involve children and teachers in the development of this product? Explain . . .

2. Publisher, now that the product is published, what is your commitment to involve children and teachers in aiding you to improve the product? Explain . . .

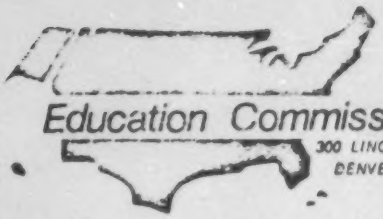
School people have every right to expect better answers to these questions each year. A satisfactory answer today, will be less satisfactory a year from now, and still less and less two or more years hence. But such questions would represent a solid beginning to the original concern of EPIE, and all of us who believe that instructional materials are important but can be better. Yet at the same time we must maturely recognize the complexity of the problem. When President Lincoln, as reported in the EPIE statement, told his tailor to make his trousers long enough to reach the ground, they at least could agree on the purpose of trousers and where the ground was. Sadly, today, often times neither the school buyer, nor the publisher are at the equivalent level of understanding. Perhaps even less so, if they try to use the EPIE guidelines.

Thank you for the opportunity to participate in some of the discussion on the issue. I assure you that Holt and most, if not all, other publishers are dedicated to the continued improvement of education through the development of increasingly better instructional materials. I believe EPIE shares that hope and promise. Yet somehow, you have over engineered the good idea.

Cordially,

Thomas J. Murphy
Vice President and General Manager
School Department

ATTACHMENT #9



Education Commission of the States
300 LINCOLN TOWER • 1860 LINCOLN STREET
DENVER, COLORADO 80203 • (303) 893-5200

April 4, 1975

Personal statement by Chris Pipho to be attached to the Learner Verification and Revision guidelines.

The notion that learners and teachers should have some involvement in the preparation, revision and updating of instructional materials is a good idea. I personally feel that reputable publishers and writers would not quarrel with this concept and in many ways are already carrying out the process.

My personal opinion [because the Education Commission of the States has not discussed or passed a resolution on LVR] is that the idea, while noble, does not easily lend itself to legislative mandate. In order to properly carry out the concept, legislation would have to require that groups of people not usually bound together in the same governance-structured matrix, work together and be supervised by some state regulatory agency, i.e.: asking that publishers involve students and teachers without making provisions for local and state boards to preempt teacher and student time would be asking students and teachers to support the publishing industry. On the other hand, making publishers pay for the student and teacher time in an era of tight collective bargaining contracts could drive some publishers out of business.

While I realize none of these fears can be substantially drawn from this document, the implementation and supervision of the process would eventually, in my opinion, call for increasingly more definitive legislation. The end results I think would be of questionable cost-effective value.

Up until now, a majority of the states have expressed no interest in learner verification and revision. The inference implied in the introductory section of the guidelines is that learner verification and revision is a coming trend. I do not agree with this contention.

Respectfully submitted,

Chris Pipho
Associate Director
Research and Information Services
Education Commission of the States
Denver, Colorado

ATTACHMENT #10

Association for Supervision
and Curriculum Development

April 7, 1975

Dr. Kenneth Baranski
The Educational Products Information
Exchange Institute
463 West Street
New York, NY 10014

Dear Ken:

Thank you for the patience and extension of time. As per our April 7th telephone conversation. I have listed my cautions below:

(1) that readers of the LVR guidelines note the temporary nature of the document as expressed in the task force desire to observe pilot situations;

(2) that the pilot situations become a basis for possible review and update;

(3) that readers are informed of the larger issues of instructional materials selection of which the LVR system is a part;

(4) that readers are informed that predictive validity is not the intent of LVR;

(5) that task force persons be reminded of the spirit of cooperation and openness rather than an unsung distrust; and,

(6) that the whole project continue to move slowly, deliberately, cautiously.

Again, my thanks go out and my hat is off to you and Ken Komoski for your efforts to incorporate some of the above cautions into the introductory letter to be attached to the document.

The document with a few editorial comments is attached for your consideration. Also, I have made the appropriate checks. It must be added that my

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reserved approval reflects a personal view - not the view of the ASCD governance system.

Again, thanks - good luck. Call on me as you need.

Yours sincerely,

Chuck

Charles A. Speiker
Associate Director

CAS/mkt

Attachment

CC: Dr. Kenneth Komoski

ATTACHMENT #11

THE SCHOOL BOARD OF POLK COUNTY, FLORIDA

TELEPHONES
813-533-0931
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BARTOW, FLORIDA 33830

P.O. BOX 391

HOMER K. ADDAIR
SUPERINTENDENT OF SCHOOLS

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DISTRICT 1

ROBERT J. ESTES
DISTRICT 2

EDWIN A. THOMPSON
DISTRICT 3

JAMES W. GRAY, JR.
DISTRICT 4

TED AGGELIS
DISTRICT 5

April 8, 1975

Mr. P. Kenneth Komoski
The Educational Products
Information Exchange Institute
463 West Street
New York, New York 10014

Dear Ken:

I apologize for failing to meet your deadline. My feelings on the fifth draft of your LVR report are similar to my previous comments on the subject and I see no point in re-running those thoughts.

With specific regard to the report itself, I believe it to be a lucid, well written document which more than adequately expresses your objectives for the program, but since I don't share your premise I can't bring myself to endorse the final work.

I would be pleased to contribute anything I have to offer as you continue your efforts to refine this draft. I know I appear recalcitrant and accept the fact that I am. I hope, nevertheless, that our difference never becomes one of more significance than our difference on this one issue.

Sincerely,

Edwin A. Thompson
School Board Member, District #3

EAT:ry

APPENDIX D

OUR DECISION NOT TO WRITE MODEL LEARNER VALIDATION STATUTES

In the process of developing model legislation to promote improvements in instructional material effectiveness we decided to limit our efforts to model legislation on learner verification and revision and not include model provisions for learner validation.

The EPIE Task Force paper (Appendix C) at pages 1-2, and one of its Appendices (labelled Appendix: Section C), discuss the distinction between learner validation and learner verification and revision. The proposed California abstract (Appendix E) and California preliminary guidelines (Appendix F) describe in detail a learner validation process -- though they call it learner verification. The Staff's letter to Dr. Wayne Henderson of the California Department of Education (Appendix G) analyzes the validation requirements of the California documents, compares them to learner verification and revision principles and argues that the validation requirements exceed the scope of the California statute, since the statute mandates only learner verification.

Learner validation is an attempt to determine the classroom reliability of instructional materials. It is an attempt to determine through testing the percentage of students who can be expected to master the content, or some percentage of the content, of the instructional materials they use.

Our decision not to write model learner validation statutes was based on two major considerations. First we have serious doubts as to whether it is possible to learner validate instructional materials. Learning is a complex function. To reliably measure the effect of instructional materials, all other variables involved in the learning process would have to be identified, isolated and controlled. We doubt that they all can be identified. We doubt that teaching methods can be controlled.

Second, the cost of learner validation in terms of dollars and other values is very high. Statistically-significant samples of learners must be employed. The learning characteristics of the students involved must be identified in great detail. Teacher presentation has to become a "controlled variable," not just for testing situations, but for all classroom instruction. Learner validation is meaningless without methodological rigor, but this rigor seems costly and dehumanizing. We do not see any satisfactory way around these problems.

APPENDIX E

Abstract

LEARNER VERIFICATION

by Calvin E. Chunn, Ph.D.

California's new instructional materials law requires learner verification of textbooks and materials:

> Education Code Section 9426. Publishers and manufacturers shall, in accordance with rules and regulations adopted by the state board, develop plans to improve the quality and reliability of instructional materials through learner verification. Governing boards shall be encouraged to permit publishers and manufacturers to have limited access to classrooms for necessary testing and observation. Publishers and manufacturers shall provide copies of test results and evaluations made as part of learner verification at the request of any governing board.

It is estimated that 99 percent of materials now in use have not been pre-tested, nor verified.

A systematic cycle of trials with pupils under stated conditions against control groups will discover materials that are successful or are failures.

Eleven steps are suggested for the process of verification. Reports should be stated by the scientific method, and results measured by a proposed formula.

When the educator later desires to order materials, he or she can examine the list of relative ratios of comparable confidence and the generalized conclusion above, and then know that teacher is competent to determine the strengths and weaknesses of the competitive verified materials. Teacher can thus make intelligent orders of the worthy items, and bypass the failures.

This value for teachers, added to the improvement to be gained by verification of learners themselves, should benefit everyone in the educational process.

LEARNER VERIFICATION

By Calvin E. Chunn, Ph.D.

The new California textbooks and materials law mandates that publishers shall develop plans to improve the quality of their materials through learner verification. The code requires further that the State Board of Education shall make rules and regulations regarding this. There is no requirement for the Commission to do anything in this process but the following report, for your information, is designed to explore the question and offer some suggestions. Commission ideas are certainly welcome.

> Education Code Section 9426. Publishers and manufacturers shall, in accordance with rules and regulations adopted by the state board, develop plans to improve the quality and reliability of instructional materials through learner verification. Governing boards shall be encouraged to permit publishers and manufacturers to have limited access to classrooms for necessary testing and observation. Publishers and manufacturers shall provide copies of test results and evaluations made as part of learner verification at the request of any governing board.

This section of the law does not spell out what the verification will be, but only that it must be done. The background for this particular passage on the legislation was caused by the fact that Assemblyman Ryan's staff discovered that hardly any pre-testing or pre-evaluation are performed on publishers' materials. Such pre-tests and post-tests are conducted as a matter of course in other industries such as in cereals, automobiles, and medicines, but scarcely at all in publishing.

The present situation may be described in a statement given by Mr. P. Kenneth Komoski, President of the Educational Products Information Exchange Institute, before the Select Subcommittee on Education of the Committee on Education and Labor, United States House of Representatives on May 11, 1971:

> "My review of the present situation regarding the development, selection and, use of educational materials has led me to the following conclusion: At this time of national concern over consumer protection, the largest single group of unprotected consumers is made up of the 50 million school children who are being required to learn from educational materials almost all of which have been inadequately developed and evaluated."

Since it is estimated that 99 percent of the materials which school children are now required to study have never been put through any phases of learner verification or revision, thus the best-seller list of educational textbooks or materials has been by accident rather than by scientific plan.

Mr. Komoski went on to say to the Congressional Committee that he referred to textbooks, films, tapes, kits and complex multimedia systems that are the concrete artifacts of learning in our schools. He further pointed out that these materials are the tools of learning, and whereas one might operate a school such as Socrates did under the olive trees, or even an educational system without the formality of schools, Komoski maintained that the modern educational system without tools is inconceivable because today's education requires tools to be better, sharper, and more dependable and effective than ever before.

M. W. Kirst and D. Walker in "An Analysis of Curriculum Policy Making" (Review of Educational Research, 41, 492, 1971) estimated that 75 percent of a child's classroom time and 90 percent of the homework time are spent using text materials. They estimated that 2 percent of a school budget is spent for materials and marveled that so little attention has been paid to appraising the quality of the resources.

"We can make better selections of materials," declared Martin De Rodeff of Hayward Unified School District, at the Educational Technology workshop in Sacramento on March 1, 1973, "if we have more evaluation."

"Evaluation," observed Jack H. Stoltz, Director of Santa Barbara County Instructional Media Services on February 27, 1973, "should serve to eliminate the amateurs and the hot salesmen of gadgets in favor of educator publishers with tested, proven wares."

Mr. Komoski, in the New York Times January 8, 1973, called the multimedia learning materials EDU-TAINMENT and says that the profits in these run up to 300 percent, while book profits are a modest 7 percent. He said that 200,000 kits of media are clustered around 17,000 textbooks.

With the trend toward individualized teaching and accountability for teachers, let us also hold the publishers who supply the tools accountable.

American ingenuity, helped by Federal finance, has created many new technologies of education that should help to improve

learning. Mr. Komoski charged before the committee, however, that publishers are not fulfilling their obligation in this regard:

> "The result is that educational purchasers are being presented with a tremendous variety of options --even more than are offered to the American car buyer. But, as is the case with so many of those automotive options, the educator's options are too often trivial variations on overworked and, in the long run, ineffective themes. Today's teachers and students do not need an ever-increasing quantity of options. What they do need desperately are high quality alternatives to the inadequately developed materials they are now required to use."

One gesture toward verification has appeared in Washington, D.C. which has designed a "competitive partnership" in which the school system will allow a group of competing companies to install comparable products in comparable classrooms. Evidence of each product's performance with pupils will be used to determine which will be adopted, according to Komoski in the Times.

One merely needs to scan the list of submissions in various materials to note the changes that your Commission has had in just a short period of time, and consider the observations of those of us who have been working in the area of instructional materials longer, and you will note that we all have seen many fads introduced to meet needs, but how quickly have we discovered afterward that some of these fads have died because of their own inadequacies. Consider how we might in a few years view the earliest books on Black history after adequate research has brought forth scholarly studies in contrast to those early attempts. Note too that one publisher in the new adoption has admitted that his booklets on drug education are wanting in timeliness and quality. Observe now the books on ecology and think what they might be ten years from now. Remember how popular programmed instruction was when it first appeared, and how rapidly the 30 to 50 companies that got into the act died out because of the lack of quality of their product. For better or worse, consider the new math and its development to fill a need; also consider the use of the inquiry approach in science and social sciences and the transitional grammar utilized in the current English textbook adoption. Note also the rapid rise and fall of the attempts of commercial packagers to provide school districts with guaranteed learning results or no pay.

One might ask, "Are these materials sold to us as new each year really the best that we can have, or is it possible to improv

them in advance by means of some valid verification before committing them to untried use?

The new math and the inquiry approach were doubtless developed as a result of learner verification. A new methodology in biology was developed in just that fashion by a Federally-supported biological sciences curriculum study group which decided that the old taxonomic approach was not entirely valid for the teaching of biology. A group of biologists suggested three methods: cellular, biochemical and ecological. They revised materials and submitted them to learner verification with pupils who helped to improve them and then finally they were released for commercial distribution.

It seems, therefore, entirely plausible and necessary to carry out the mandates of the Education Code, regarding learner verification which for us would consist of a systematic cycle of tryouts with actual learners under stated conditions against control groups, and would involve not a universal application of the test procedure but an appropriate sampling of a selected group. How the publisher does it would be largely up to the structures of educational research, and as I see it, the Department might work with the publishers in the design of vehicles for ascertaining actual verifications.

In the Education Code, school districts are directed to grant publishers access to classrooms for necessary verification of the quality of their products. California could take the lead in establishing a standardized method for pre-evaluating materials before they reach the full classroom.

As an example of one area for study, the findings of the Department's Mr. Harold Hammarsten have revealed that in nearly all subjects, the textbooks are written for vocabulary levels above the grades for which they were adopted. It is easy to see that a pre-test of a sample of pupils could have discovered the defects in such a high vocabulary level ahead of time in any given textbook or audiovisual material. The publisher could then have revised the level downward before full publication and thus would greatly have enhanced his product.

The use of a questionnaire could be adapted to learner verification by means of sending packages of the material to schools who agree to participate in the test, and following the test, obtaining the views of teachers and pupils towards the effectiveness of having utilized the material in actual classroom situations.

Similarly, the interview, if properly arranged so that the questions are standardized, would elicit valuable information for the publishers, the Curriculum Development and Supplemental Materials Commission, the Board and educators.

Although many times the pupil may be the forgotten person, his reactions to such a questionnaire could be important. He could point out what information he learned, or what he failed to learn, or what he would liked to have learned from a given book or program. Adaptations of the techniques originally developed by Dr. George Gallup, in the field of reader interest surveys, could be utilized in the classroom to point out whether chapters were completely read, only partially, or none, and whether they were boring, interesting, or enlightening. In the realm of vocabulary, some of the studies of Dr. Rudolph Flesch, could be utilized to determine the effectiveness of vocabulary levels in given materials for specific classes. In the realm of semantics, the studies of Dr. Hayakawa could be adapted to enhance the impact of the actual words used in textbooks or audiovisual materials.

The publisher, as well as the rest of us, will be experimenting and groping for successful ways through the maze. The publisher should be allowed and encouraged to offer suggestions to us on what he plans to do in this realm. In the case of publishers who have already pre-tested their materials in other states, we would expect to be apprised of the results they achieved or failed to achieve.

In the process of learner verification both the publisher and the school must go through formal steps. For valid results, they must assess in advance their requirements, their limitations, and how they will proceed to the end that they seek.

The steps involve:

1. Assess needs and the purpose of the material, such as skill development, concept development
2. Establish performance objectives (goals)
3. Determine activities necessary to the study
4. Evaluate these three steps
5. Select and organize content
6. Schedule support services
7. Conduct necessary inservice training
8. Consider reactions and vocalized feedback of students
9. Compile results
10. Evaluate the entire process
11. Establish valid conclusions

Certain questions arise obviously in the process of learner verification:

1. What instruments will be used:
2. Will control group be used?
3. What sampling should be used?
4. What is the evaluation design?
5. Does the report of the study include a description of the population, school and teachers?
6. How can the publisher determine attitudes?
7. Do the materials offer only a printed-reading mode? Only audiovisual modes?
8. How is the material being used elsewhere?
9. How should it be used in California?
10. What criterion measures were used to judge the product's effectiveness?
11. Who conducted the test?
12. When in the development stage was it conducted?
13. Are the data analyzed?

The reports of the study should include these rubrics of the scientific method:

1. Problem
2. Methods
3. Results
4. Discussion
5. Conclusion

To complete the eleven steps, it is necessary to validate the findings. I suggest a pre-test in the subject and content of the material, a post-test of these, and a compilation of the differences in scores achieved at each end of the time continuum.

In considering the gain or loss of knowledge, cognition or skills, educators must involve as typical a test and control group as they can conveniently design and attempt to move as far through the material as time will permit. The teacher, in this process as in all learning activites, behaves as the catalyst.

I suggest that we establish the Cal formula for verifying material:

$$\frac{\sum x}{n} - \frac{\sum y}{n'} = z$$

$$\frac{n'}{n} = r$$

$$z \times r = v$$

The symbols here represent:

Σ = sum of the scores

x = the post-test

y = the pre-test

h'= hours spent using material undergoing test

h = total hours spent in the subject for the span covered

r = ratio

v = ratio of comparable confidence

z = difference in group scores

If we substitute figures for the symbols, an example would be:

$$80 - 70 = 10$$
$$\frac{17}{36} = .4722$$
$$10 \times .4722 = 4.72$$

To express this another way, let us assume:

If I am the publisher of a third grade math book and my book is to be judged on (1) objectives, (2) organization, scope or sequence of the materials, (3) methodology to be utilized, and (4) the text's effectiveness with pupils, I want to know how much time the teacher spends on mathematics instruction and how much of this time actually involves the material in my textbook.

Most of the elementary schools in California operate only 176 days a year. If mathematics is taught 20 minutes a day for 176 days, the third grade pupils will receive approximately 59 hours of instruction. If my text is used 40, 20 or each of the 59 hours, I need to know that fact in order to relate it to pupil accomplishment. If I know these facts, I can issue several qualifying statements about my text.

"If an experienced third grade teacher utilizes this text in the recommended manner for more than 50 hours of instruction during the school year, 75 percent of the pupils receiving such instruction can reasonably be expected to demonstrate mastery of the following functions and concepts: ----"

"If an experienced third grade teacher utilizes this text in the recommended manner for at least 35 hours of instruction during the school year, 50 percent of the pupils receiving such instruction can reasonably be expected to demonstrate mastery of the following functions and concepts: ----"

Maurice J. Eash, Director of the Office of Evaluation Research, University of Illinois, said in Audiovisual Instruction, (December 1972) that a rigorous analysis done in systematic fashion gives valuable data on instructional materials, and an additional gain is the education that teachers receive from engaging in the process. He wrote, "They become aware of the design, and are more likely to preserve its integrity when the materials are taken into the classroom."

When the educator later desires to order materials, he or she can examine the list of relative ratios of comparable confidence and the generalized conclusion above, and then know that teacher is competent to determine the strengths and weaknesses of the competitive verified materials. Teacher can thus make intelligent orders of the worthy items, and bypass the failures.

This value for teachers, added to the improvement to be gained by verification of learners themselves, should benefit everyone in the educational process.

To insure objectivity in the verification process, the State Department of Education would coordinate and administer the program. With input from the Commission, the publishers, the county and district schools offices, subject matter and testing specialists in the Department would design the instruments.

The publisher wishing to test his materials would register the titles with our unit. Acting as liaison, we would also find districts willing to register as participants. The publisher would furnish free materials at designated times to the indicated schools which would conduct the studies.

The county schools offices and district offices would be solicited by us for their cooperation in analyses of the projects in terms of classroom effectiveness.

Following pilot studies, reports would then be transmitted by county and district offices to us; we would compile and publish them and make them available to Commissioners, their advisers, school districts and teachers who participated for their guidance in choosing the most appropriate materials to meet the needs of the pupils of California.

Use of materials is really and finally determined by the classroom teacher. If she does not utilize the chosen materials, her disinterest indicates a poor choice by the groups who have chosen them. If a district is expected to make intelligent selections to meet the needs of the children, the district must be provided with a properly screened and evaluated list.

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APPENDIX F

DRAFT

Preliminary
Guidelines for Learner Verification

Prepared by

The Learner Verification Committee

Dr. Ellsworth Chunn, Chairman
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Dr. Ruth Howard, Presiding Officer, Curriculum Development & Supplemental Materials Commission

Mr. Peyton Hurst, Regional Manager, Laidlaw Brothers

Mr. Michael Israel, Manager, Marketing Services, General Learning Corp., Silver Burdett Co. Div.

Mr. Harry Phillips, Vice President, Ginn & Co. (A Xerox Co.)

California State Department of Education
Sacramento January 1974

A Draft of Guidelines for Learner Verification

The State Board of Education recognizes the need for accountability in education in teachers, administrators, pupils, instructional materials, boards and patrons. In a democracy, all activities and persons are or should be accountable--as they are interrelated and therefore dependent upon--the various contacts that compose the variables of life.

This statement, however, is addressed to a particular accountability, and while being specific, the Board, nevertheless, recognizes the interdependence of this subject, learner verification of textbooks and instructional materials, with the schools and the public. The same spirit of determining by evaluation and assessment of performance that is required in the Stull bill (Education Code 13485-13490) is intended in the assessment of performance of instructional materials to come under the Board's consideration for state adoption. Detailed guidelines are suggested below, not as restrictions but as stimuli for initiative by publishers and educators to ascertain beyond the level of guesses, the relative merits of material in actual use with pupils.

State law provides for learner verification as follows:

> Education Code Section 9426. Publishers and manufacturers shall, in accordance with rules and regulations adopted by the state board, develop plans to improve the quality and reliability of instructional materials through learner verification. Governing boards shall be encouraged to permit publishers and manufacturers to have limited access to classrooms for necessary testing and observation. Publishers and manufacturers shall provide copies of test results and evaluations made as part of learner verification at the request of any governing board.

Learner verification means the ascertainment of the performance capability of an item of instructional material by means of actual use with pupils and the results substantiated by means of tests, questionnaires, interviews, or other valid measuring devices and such results reported by the scientific method. As the law states in Education Code Section 9234:

> 9234. "Learner verification" means the continuous and thorough evaluation of instructional materials for their effectiveness with pupils.

Such verification is intended to improve the quality and reliability of textbooks and audio-visual and manipulative instructional materials.

To this end, school district governing boards should provide classrooms for pilot testing and evaluation of programs and ensure teacher cooperation in conducting verification of programs. Governing boards should arrange the necessary evaluation instruments needed for their areas whether for rural, urban, suburban, mobile, mixed or one ethnic population.

"Test" means any device used to measure or evaluate the knowledge or achievement of students.

"Quality" is the degree of excellence which a thing possesses.

"Reliability" is the assurance that the material will perform in the same manner each time it is used.

Duties of Publishers

Publishers shall provide free copies of necessary instructional material to school districts willing to participate in pilot testing or evaluating. Publishers shall be responsible for providing tests or evaluation instruments, questionnaires, conducting interviews, collecting, tabulating, analyzing, reporting.

The Board recognizes that the means for verifying learning material are varied and the choice should be flexible; therefore, the publisher shall be free to select the test or evaluation vehicle that may be consistent with the objective, which is to improve educational materials by verifying their accomplishments with learners. Such vehicles might be standardized tests, criterion-referenced tests, group norm tests, interviews, aptitude tests, skill development measurement, observation, structural response, etc.

The minimum respondents in any verification shall be one classroom of 30 pupils; more pupils, of course, may be tested in any program at the discretion of the publisher and school personnel. Control groups may be used also to reinforce validity.

To standardize the method of reporting the findings of a learner verification, written reports shall follow the following formula indicating headings of the sections of the report:

1. Abstract
2. Problem
3. Methods
4. Results
5. Discussion
6. Conclusions

The report shall follow the objective standards of technical report writing. The abstract may be an executive summary and is intended to depict succinctly the points of Problem, Methods, Results, and Conclusions.

Where indicated in his report the publisher should reveal the necessity for revisions, expansion or contraction, shifts in emphases, requirements for the addition of newer activities or exercises, changes in teaching methodology, adjustments in time framing, alteration of goals of target populations, and any other modifications suggested as a result of the learner verification process.

In the report the publisher is expected to state the learning objectives, type of pupil for which the particular material is best suited, and the percentages of pupils who can profit from the use of such materials.

Following the evaluation process the publisher shall submit statements of verification to the State Board of Education to the attention of its Curriculum Development and Supplemental Materials Commission and the State Department of Education, in such quantities as may become necessary, as directed by the Department. Until directed differently, publishers shall supply one copy for each member of the Curriculum Development and Supplemental Materials Commission, one for the State Board, and three for the Department.

Following submission of the publisher's reports, counties, districts or schools may, on their own initiative, perform verification tests or evaluations with learners in order to replicate or confirm the findings which have been presented.

As a guide to verification, both the publisher and the school should assess in advance their requirements, their limitations, and procedures. Such a function might involve most of the following:

1. Assess needs of the pupils and the purpose of the material, such as skill development, concept development
2. Establish performance objectives (goals)
3. Determine activities necessary to the study
4. Evaluate these three steps
5. Select and organize content
6. Determine the need for support services and schedule them if necessary
7. Conduct necessary inservice training
8. Consider reactions and vocalized feedback of students
9. Compile results

10. Evaluate the entire process
11. Establish valid conclusions

In the process of learner verification, the publisher, teacher, Commission, and evaluators should consider as many as possible of the following questions in order to test the validity of the process:

1. What instruments will be used?
2. Will control group be used?
3. What sampling should be used?
4. What is the evaluation design?
5. Does the report of the study include a description of the population, school and teachers?
6. How can the publisher determine attitudes?
7. How well was the material taught?
8. How well did the pupils perform the tasks required by the materials?
9. Do the materials offer only a printed-reading mode? Only audiovisual modes?
10. How is the material being used elsewhere?
11. How should it be used in California?
12. What criterion measures were used to judge the product's effectiveness?
13. Who conducted the test?
14. When in the development stage was it conducted?
15. Are the data analyzed?

16. What vocabulary list was used?

17. What socio-economic levels were tested?

18. What ethnic groups were tested?

19. How many classrooms participated?

20. What age groups were involved?

The conclusions deduced from a verification program should be valid and objective. If, however, they are not logically achieved, or subject to suspicion, they should be examined themselves. Variables such as learning ability, achievement level, time spent with material, pages covered, teacher ability with such fresh, relatively unfamiliar material, and the like will cause deviations of more or less intensity. Protections against misleading conclusions resulting from an over influential variable might be introduced to help insure the competitive relationship. One consideration in the process might be to administer a pre-test, a post-test, and a compilation of the differences in scores from each end of the continuum.

Another consideration affecting results is the time versus coverage concept. Generally, the longer the time spent on the material the more pages or frames of it are covered. The greater length of coverage would tend to indicate that there was more learning achieved. To examine the relationship of time vs. coverage, the Cal formula might be employed:

$$\Sigma x - \Sigma y = z$$

$$\frac{h'}{h} = r$$

$$z \times r = v$$

The symbols here represent:

Σ = sum of the scores

x = the post-test

y = the pre-test

h'= hours spent using material undergoing test

h = total hours spent in the subject for the span covered

r = ratio

v = ratio of comparable confidence

z = difference in group scores

If a publisher has previously verified his material in another state or in California, he need only submit copies of his objective study. If he has not yet verified it with actual learners, then the process described above for piloting would be indicated. In either event, the learner verification should report on the majority of questions stated in the questionnaire attached.

Conclusion

In summary, therefore, the process of learner verification means simply that the publisher determines and reports the answers to two questions:

1. For what purpose was the material designed?
2. How well was that purpose achieved when the pupils used it?

DRAFT - 10/31/73

LEARNER VERIFICATION TEST

Title of Materials _____

_____

Publisher _____

Grade for which intended _____

Subject _____

CONTENT	Strongly Disagree	Disagree	No Opinion	Agree	Strongly Agree
1. The reading level is appropriate to the grade level.					
2. The program provides adequately for individual pupil differences.					
3. The program helps students to draw conclusions and make generalizations.					
4. The program generates student involvement and enthusiasm.					
5. The program meets the needs of the learning ability level for which intended.					
6. The material provides experiences enhancing auditory and visual perception.					
7. The material provides reentry for reinforcement of previous learning.					
8. Unfamiliar concepts are related to pupil experiences.					

CONTENT	Strongly Disagree	Disagree	No Opinion	Agree	Strongly Agree
9. The educational materials appear to be durable.					
10. The educational materials are convenient to use in class.					
11. The educational materials are convenient to store.					
12. The games included in the program contribute to teaching and reinforcing skills.					
13. There is something awkward in using this audio-visual program					
14. There is something physically dangerous in using this audio-visual program.					
15. The material provides adequate opportunity to achieve instructional goals.					

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TEACHER ASSISTANCE	Not Applicable	Unsatisfactory	Poor	Fair	Good	Excellent
16. The teachers edition suggests alternative teaching strategies.						
17. The teachers edition suggests ideas for motivation.						
18. The teachers edition suggests ideas for followup.						
19. The teachers edition suggests ideas for extension activities.						
20. The teachers edition gives daily teaching helps.						
21. The teachers edition contains suggestions for pupil evaluation.						
22. The teachers edition alerts teachers to possible learning difficulties and offers suggestions for overcoming them.						
23. The teachers edition includes references to additional materials which are appropriate for motivation.						
24. The teachers edition includes references to additional materials which are appropriate for enrichment.						

TEACHER ASSISTANCE	Not Applicable	Unsatisfactory	Poor	Fair	Good	Excellent
25. The teachers edition includes references to additional materials which are appropriate for extension.						
26. The material requires more teacher preparation time than other other new programs.						
27. Teacher materials clearly delineate the purposes of the material.						
28. The textbook is rated as follows on these concepts: a. Ease of teaching b. General format of the teachers edition c. Organization of subject matter d. Teaching and learning methods						

To help us check the material's value with learners, please answer:

I teach about_____hours per week to an individual class in this subject.

I have taught this subject_____years.

NOTE: Your name will not be identified with your answer which will be combined only with answers from other teachers in California to help us decide the potential value of this material to the pupil.

APPENDIX G

SAN DIEGO CITY SCHOOLS

EDUCATION CENTER | 4100 Normal Street

RECEIVED
AUG 8 1974
Deputy Superintendent for Programs

DATE August 2, 1974

MEMO TO Members and Staff of the Curriculum Development and Supplemental Materials Commission

FROM Robert A. Bennett

SUBJECT LEARNER VERIFICATION

Although we have made progress in implementing Section 9426 of Division 8 of the Education Code thanks to the efforts of the Learner Verification Committee, I believe the Commission now needs to turn its attention to formulating more effective means of implementing the major objective of learner verification "which is to improve instructional materials."[1] The nature of the problem is stated by the School Division of the Association of American Publishers in its brochure entitled "Improving the Quality of Instructional Materials" as follows:

> The majority of publishers, however, share the doubts of many educators when the terms like "program validation" or "learner verification" are used simplistically to suggest that learning materials alone can guarantee specified levels of pupil performance. Some account must be taken of the nature of the students, the conditions in any classroom, the outside influences on learning, the preparation of teachers, the ways in which the materials are used. Neither research nor experience supports the assumption that learning materials can be the sole determinant of pupil performance.

The California State Department of Education guidelines, quoted earlier, emphasize that learner verification "is intended to improve the quality and reliability of textbooks and audio-visual and manipulative instructional materials" (page 2). The guidelines go on to suggest (page 4) that in order to achieve this purpose "the publisher should reveal the necessity for revisions, expansion or contraction, shifts in emphases, requirements for the addition of newer activities or excercises, changes in teaching methodology, adjustments in time framing, alterations of goals of target populations, and any other modifications suggested as a result of the learner verification process."

---

[1] Guidelines for Learner Verification, California State Department of Education, January, 1974, page 3.

Two points, I believe, need to be emphasized in planning learner verification implementation. First, to achieve its purpose, close cooperation between schools and publishers will be required; and second, implementation plans must be realistic in terms of the "real world" marketplace.

The close cooperation between schools and publishers is also called for in the brochure prepared by the School Division of the Association of American Publishers, quoted earlier, in the following statements:

> Schools can expect publishers to make available accurate information on . . . . plans for refining and improving materials after publication.
>
> . . . . . .
>
> For their part, schools can contribute substantially to the process of improving the quality and use of learning materials by . . . providing opportunities for publishers to explain to teachers the efforts being made to improve materials.
>
> . . . . . .
>
> Out of this continuing partnership between publishers and schools will come stronger, more reliable, and more effective materials.

The current learner verification reports received by the Commission tend to support the effectiveness of each publisher's materials. This is all that is reasonable to expect in the "real world" competitive marketplace. Commissioners are handicapped in interpreting these reports because they do not know first hand the variables that operated in each of the field test situations nor can they be sure if they are reading <u>all</u> studies or just <u>selected</u> studies based on the use of the particular set of materials being considered for adoption.

I propose that the five year plan described below be considered in the area of mathematics. This plan is given only as an illustration and it could be extended to all the other subject areas involved in state adoption.

1974-75 (year of pre-adoption study) Publishers submit plans for learner verification studies.

1975-76 (year after adoption and before implementation) Publishers submit a progress report of where and under what conditions learner verification studies are being conducted.

1976-77 (year of implementation) Publishers analyze data collected from studies and plan needed revisions in their instructional materials--no report required on mathematics materials this one year.

1977-78 (year of preparing new criteria for mathematics materials adoption) Publishers report on changes they are making in their materials as a result of learner verification studies.

1978-79 (year of second biennial review) Publishers document improvements they have made in their materials as a result of learner verification studies.

Once this five year cycle has been completed, the Commission could look forward to reports in each of the biennial adoption review years that point out what improvements have been made in the instructional materials as a result of studying the progress of learners using those materials. Through this process, publishers are not given the unrealisitc task of documenting the weaknesses of their materials. Rather, they are asked to report on how their materials have been improved and to document through learner verification studies why the materials are now more effective. This type of documentation can provide teachers with new insights into the teaching-learning process, and the real goal of learner verification--improved instructional materials for students--will result.

Five-Year Plan not necessary (D. Sauter, McGraw-Hill)
could be called "on going cycle."

RAB:gp

APPENDIX H

LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW

SUITE 520 • 733 FIFTEENTH STREET, NORTHWEST • WASHINGTON, D.C. 20005 • PHONE (202) 628-6700

CABLE ADDRESS: LAWCIV, WASHINGTON, D. C.

February 3, 1975

Dr. Wayne Henderson
State Department of Education
Sacramento
California

Dear Dr. Henderson:

It was a pleasure to meet you at the recent session of the Learner Verification Task Force. This letter is in response to your request for our comments on the "Preliminary Guidelines for Learner Verification" formulated by the California State Department of Education in January, 1974. Since you supplied us with Dr. Calvin E. Chunn's paper on learner verification and a memorandum dated August 2, 1974, from Mr. Robert A. Bennett to the Curriculum Development Commission, we will refer to them as well.

Review of the Guidelines has lead us to four major conclusions: First, the Guidelines exceed the requirements of the statute when they demand the determination or certification of instructional material reliability. Second, the Guidelines implicitly intertwine learner verification and the purchase process; they make learner verification a matter of competition among publishers rather than a matter of each publisher complying with appropriate state standards; while this intertwining may not violate the statute, it might not be the best of all permissible policies. Third, some of the incorrect or unnecessary portions of the Guidelines regarding enforcement and selection for purchase undoubtedly result from the potentially misleading, but actually insignificant, use of the words "reliability" and "evaluation" in the California statute. Fourth, the steps of the learner verification process are not identified in the Guidelines as well as they might be.

THE GUIDELINES EXCEED THE REQUIREMENTS OF THE STATUTE WHEN THEY DEMAND THE DETERMINATION OR CERTIFICATION OF INSTRUCTIONAL MATERIAL RELIABILITY

The Guidelines demand the determination or certification of instructional material reliability

For each instructional material the Guidelines demand the computation of a number called the ratio of comparable confidence. This number is an index of the "reliability" of the in-

structional material. "Reliability" is defined by the Guidelines as "the assurance that the material will perform in the same manner each time it is used." Guidelines, at page 2. The determination of reliability enables publishers or others to make "qualifying statements" about the materials. In essence, these statements are certifications of degrees of reliability. An example is found on page 7 of Dr. Chunn's paper:

> If an experienced third grade teacher utilizes this text in the recommended manner for more than 50 hours of instruction during the school year, 75 percent of the pupils receiving such instruction can reasonably be expected to demonstrate mastery of the following functions and concepts: ----

The Guidelines' demand for determination or certification of reliability exceeds the requirements of the statute

The statute reads:

> Publishers and manufacturers shall, in accordance with the rules and regulations adopted by the state board, develop plans to improve the quality and reliability of instructional materials through learner verification. California Education Code. Sec. 9426.

The learner verification process generally results in some improvement of the reliability of instructional material; hence, the statute identifies improvement of reliability as one of the legislative goals sought to be accomplished by requiring learner verification. But the statute does not say that publishers shall prove the classroom reliability of their instructional material. The statute does not even say that publishers shall attempt to determine or certify how well classroom learners will perform using the material. Nor should it, for the process of learner verification is incapable of leading to a determination, certification, or proving of instructional material reliability in terms of specific guaranteed levels of classroom performance.

If anyone were to try to implement a comprehensive scheme to determine whether (let alone guarantee that) any educational process will result in specified levels of pupil performance, learner verification of the instructional materials could only be a small part of the overall plan. Many other crucial factors would have to be taken into consideration -- teacher motivation, teacher preparation, and other things such as whether the pupils had breakfast that day. The publishers' fears that the California statute requires them to "guarantee specified levels of pupil performance" (Bennet memorandum, quoting the A.A.P. at page 1) should be laid to rest. The language of the statute does not require such guarantees because the process of learner verification is incapable of producing them.

Perhaps some other process might be able to produce such guarantees. Validation is sometimes mentioned as a candidate. But the statute does not say that publishers shall prove, or even improve, the reliability of instructional material by validation or by "the best means available." The statute mandates learner verification, nothing else.

The statute does define learner verification as a process of "thorough evaluation of instructional material for their effectiveness with pupils" (Education Code, Sec. 9234), but "evaluation" as that term is used in the total context of both the definition and the operative statute does not mean "assigning a number value to" or "quantitatively measuring." The total context in which the term evaluation is used clearly contemplates just the process of discovering ways to improve instructional material, not the application of a measuring stick to quantitatively determine and certify either the worth of, or any net increase in worth of, instructional material.

By requiring such a firm quantitative determination (in the form of ratios of comparable confidence resulting in certifications of pupil performance levels) the Guidelines exceed the mandate of the statute.

Any regulations enforcing the statute as it is should focus on monitoring the integrity of each publishers' use of the verification process. Regulations should state in detail the specific acts publishers should do. They should also state the precise proof publishers have to submit to show they are doing those acts in good faith. Regulations should not require any computation of an index of overall reliability, for engaging in learner verification produces no such index.

THE GUIDELINES IMPLICITLY INTERTWINE LEARNER VERIFICATION AND THE PURCHASE PROCESS; THIS MAY NOT BE THE BEST POLICY

The Guidelines implicitly intertwine learner verification and the purchase process

By requiring the computation of each instructional material's ratio of comparable confidence, the Guidelines implicitly provide for the ranking of each instructional material according to its "determined" or "proven" "reliability." Presumably, the choice among similar instructional materials offered by competing publishers will be made partially on the basis of the "reliability" rankings of the material. Each publisher, instead of just offering adequate proof that they have properly pursued the learner verification process according to an approved plan, will feel compelled to demonstrate that their material is "more reliable" than the competition's. This result seems implicit in the regulatory scheme provided by the Guidelines.

It is expressly contemplated in Dr. Chunn's paper, at page 8:

> When the educator later desires to order materials, he or she can examine the list of relative ratios of comparable confidence and the generalized conclusion above [refering to one of the "qualifying statements" quoted earlier], and then know that teacher is competent to determine the strengths and weaknesses of the competitive verified materials. Teacher [sic] can thus make intelligent orders of the worthy items, and bypass the failures.

There are advantages to not making learner verification a subject of competition for sales among publishers

The statute requires only that plans to implement learner verification be developed. (Implicitly, the statute requires that the plans be carried out.) The statute does not demand that publishers who do the "best" learner verification should be given priority over others. Thus, an option available to California is to reject attempts to determine the "best" learner verifiers and simply monitor each publisher's implementation of the learner verification process to ensure that they are competent and engaged in appropriate, diligent efforts to revise and improve their instructional material.

To be sure, it might be possible to make judgments as to which of several scientists adheres most closely to the scientific method in performing experiments and then conclude that that scientist is the "best" user of the scientific method and that her or his work should be respected more than the work of other scientists. Similar judgments might be possible regarding publishers' adherence to sound learner verification techniques. However, it would also be possible to enforce the California statute by establishing just minimum compliance standards. The question of whether to implement the statute by a competitive or minimum compliance approach is a difficult one, but we think a minimum compliance approach might be advantageous. If the state board were to take on the task of adjudicating competing publishers' claims about the superiority of their learner verification efforts, they would have to formulate very detailed learner verification methodology standards to serve as a yard stick against which to measure the competing claims. The state board would have to be prepared to defend their yard stick against publishers' claims that their methodology is superior to both the board's and other publishers. We think this is unnecessary. We think it would be better to simply set minimum methodology standards, encourage publisher experimentation, discourage publisher claims of superiority, encourage cooperation among publishers and the sharing of information on learner verification methodology, and then let experience produce sound bases for additional explication of the minimum compliance standards.

SOME OF THE INCORRECT OR UNNECESSARY PORTIONS OF THE GUIDELINES REGARDING ENFORCEMENT AND SELECTION FOR PURCHASE UNDOUBTEDLY RESULT FROM THE POTENTIALLY MISLEADING, BUT ACTUALLY INSIGNIFICANT, USE OF THE WORDS "RELIABILITY" AND "EVALUATION" IN THE CALIFORNIA STATUTE

We have already mentioned why the word "reliability," makes no crucial contribution to the operative requirements of the statutory language. Some improvements in reliability are expected to result from learner verification, but it is only institution of the learner verification process that is required by the statute. Improvement in reliability is just one of the reasons why the statute requires the process.

Nonetheless, in light of the dictionary meaning of "reliab" employed in the Guidelines, it is easy to see how there could be confusion as to this matter. For that reason the statute's use of the word "reliability" is unfortunate.

For a similar reason it is unfortunate that the statutory definition of learner verification uses the term "evaluation." That word is used in Sec. 13487 of the California Education Code -- a completely different statute written at another time. Sec. 13487 uses "evaluation" in such a radically different context that the operative consequences of the word are completely different from the operative consequences of the use of "evaluation" in the definition of learner verification. Sec. 13487 is part of a teacher-administrator accountability Article in the Code. (The Stull bill.) The Article provides for the "assessment and evaluation" of personnel performance and Sec. 13487 spells out the elements of assessment and evaluation as including:

> (a) The establishment of standards of expected student progress in each area of study.
>
> (b) Assessment of certificated personnel competence as it relates to the established standards.

In addition to the fact that Sec. 13487 is a completely different statute written at a different time, several other distinguishing features should be noted. First, Sec. 13487 does not use the word "evaluation" with the intent that a general dictionary definition be applied. On the contrary, the statute itself spells out the very elements of what its authors mean by evaluation. (See Subsections (a) and (b) quoted above.) Clearly, Sec. 13487 gives evaluation a unique meaning intended to be applied only to the specific subject matter of the accountability statute.

Second, the statute couples "evaluation" with "assessment" creating the operative phrase, "evaluation and assessment." "Evaluation" is not coupled with "assessment" in the learner verification statute.

Third, the element of "evaluation and assessment" which requires determination of "personnel competence" uses the term "assessment," not "evaluation," to describe that element and that determination. (See Subsection (b) quoted above.) "Assessment" is , of course, not used at allin the learner verification statute.

Fourth, even the accountability Article of which Sec. 13487 is a part does not provide for deciding whether to retain or not retain certificated personnel on the basis of their Sec. 13487-assessed "competence." The assessment is only for purposes of "making specific recommendations as to areas of improvement." Education Code. Sec. 13489. Thus, even if the use of the term "evaluation" in the learner verification statute is somehow deemed to be related to the use of that term in the accountability Article, the accountability article is no authority for reading the learner verification statute as requiring the computation of indexes of instructional material "reliability" on which to base decisions to accept or reject, choose or by-pass the various instructional materials offered for sale by publishers. In this sense, the purposes of the accountability article and the learner verification statute parallel one another, though on very different tracks. Both are limited to, in the words of the accountability statute, "making specific recommendations as to areas of improvement." The notion of specific recommendations for improvement is, of course, the heart of the learner verification concept. It also describes what learner verification is limited to.

The potential for confusion between the learner verification statute and the personnel accountability article of the Code is, of course, unfortunate. But we think careful analysis of the two statutes reveals that they are on very different tracks, even if the ultimate operative consequences of each parallel one another. The tracks are parallel only because they are both ultimately limited to processes for making specific improvements, rather than processes for adjudicating competing claims of superiority.

The Guidelines, at page 1, compare the learner verification statute to the personnel accountabiiity statute, but in a way that is potentially misleading:

> The same spirit of determining by evaluation and assessment of performance that is required in the Stull bill (Education Code 13485-13490) is intended in the assessment of performance of instructional materials to come under the Board's consideration for state adoption.

This statement is correct if it merely means that the two statutes have the same "spirit" (are on parallel tracks) because they are both oriented to, and ultimately limited to, the

the establishment of processes for making specific improvements. The statement is incorrect, however, (or at least confusing) because it makes reference to the "assessment of performance of instructional materials." This is not the language employed in the learner verification statute. "Assessment" is a term from the Stull bill. The result of refering to "assessment of... instructional materials" is confusion of the substantive requirements (tracks) of the two different statutes. Only the Stull bill mandates a process of assessing performance by comparison to established "standards of expected student progress in each area of study." The learner verification statute does not mandate such a process. No "established standards" of guaranteed pupil performance are called for. No standards are contemplated as emerging from publishers' competing claims of superiority.

THE STEPS OF THE LEARNER VERIFICATION PROCESS ARE NOT IDENTIFIED IN THE GUIDELINES AS WELL AS THEY MIGHT BE

We have already discussed what we consider to be the essential misdirection of the Guidelines, the computation and competitive use of indexes of reliability rather than the enforcement of minimum standards of methodological integrity. One additional specific objection to the Guidelines is the requirement (Guidelines, page 3) that "[t]he minimum respondents in any verification shall be one classroom of 30 pupils; ...." The initial phases of the learner verification process properly employ only one or two learners or small groups of learners (fewer than 30). The initial phases of the learner verification process are concerned with the gathering of very "fine grained" data about learning difficulties through careful observation of the learning process of individuals and individual interviews. Criterion referenced tests or standardized tests are given to small groups, classes, or groups of classes only in the later phases of the learner verification process.

With that said we will turn to the central purpose of the discussion under this heading -- analysis of the organization, specificity, and clarity of thelearner verification steps identified in the Guidelines. On pages 5 through 7 of the Guidelines eleven "requirements," "limitations," and "procedures" are first identified and then twenty "questions" are posed. These thirty-one items raise relevant points. However, they are addressed to "both the publisher and the school" and they do not state with specificity and clarity what the statute requires publishers to do. We think learner verification guidelines or regulations should accomplish four main objectives:

(1) Identification of the basic steps involved in each learner verification cycle.

(2) Identification of the specific judgments publishers have to make in deciding how to perform each step.

(3) Establishment of minimum acceptability standards and specification of the degree of discretion accorded publishers with regard to each type of judgment.

(4) Specification of the types of evidence publishers have to submit to the state enforcement agency for review.

This is not the place to write a set of regulations for enforcing the California statute, but we think it appropriate to give you at least a taste of what we have in mind.

The guidelines being developed by the Learner Verification Task Force and Article III, Section 3 of the initial draft of our model statute set forth the basic steps publishers should take when engaging in learner verification. Essentially, these steps are: (1) state the learning objectives (skills, concepts, and facts to be mastered, etc.) sought to be accomplished through use of the material undergoing the learner verification cycle; (2) test an appropriate sample of learners to determine their success in accomplishing the learning objectives; (3) gather primary feedback (through observations, interviews, and testing, etc.) from the learners and secondary feedback from others involved (teachers or researchers, etc.) concerning the specific learning difficulties encountered by individual learners, and whether learners like or dislike (or have other comparable feelings toward) the instructional material or the manner of its presentation; (4) make revisions in the material or its use guidelines based on both analysis of the specific learning difficulties and, where appropriate, the indicated preferences of learners; (5) test an appropriate sample of learners using the revised material and use guidelines to determine their success in accomplishing the learning objectives; (6) repeat the five steps with appropriate frequency throughout the life of the instructional material.

The flexibility of the language used to describe these steps is deliberate. Points of flexibility identify the judgments publishers will have to make. These judgments include judgments about methodology such as what is an appropriate sample of learners for a given cycle? What tests should be used? What other feedback-gathering techniques should be employed? How frequent should cycle repetitions be?

Some outlines of answers to these questions can be given to indicate the general direction in which regulations should evolve. Regarding appropriate samples of learners, several comments are in order. The sample should be drawn from the group of learners for whose use the publisher intends to market the material. The size of the sample should vary depending on such factors as the stage of development of the material and the number of learner verification cycles already completed. One or two learners would be appropriate for beginning cycles. Small groups, classes, or groups of classes would be appropriate for later cycles. Circumstances might arise where still later

a return to a cycle with one learner might be appropriate (perhaps to determine what difficulties new categories of learners might experience using the material).

The tests and feedback-gathering techniques should also vary according to similar factors. Close observation and interviews are appropriate with individuals and small groups. Criterion-referenced tests, and perhaps standardized tests, should be added for larger groups.

The frequency of repeating cycles for any one portion of an instructional material should depend on such factors as whether, considering the difficulty of the subject matter, an acceptable number of learners seem to be able to achieve the learning objectives and how many cycles, with what results, have been performed on other portions of the instructional material. Consideration of these factor, of course, involves discovering what per cent of the tested learners mastered what per cent of the concepts offered. But the purpose of calculating such percentages is a very limited one. It is only to help decide which portions of instructional material are most in need of revision. It is not to try to decide which of two different publishers' materials is most in need of revision; no such cross-comparison is intended. Furthermore, the purpose of calculating the percentages is not to try to draw conclusions about expected pupil performance levels in non-test situations. Surely such conclusions could not even begin to be drawn from a one-learner cycle, yet such cycles often produce the most useful data for making revisions. Careful consideration of the results of such cycles should not be discounted in favor of analysis of large group test data. The purpose of learner verification is to discover specific ways to improve materials, not to certify or make firm predictions of pupil performance in the non-test situation.

As for the type of evidence publishers should be required to produce to document their compliance with the statute, the reporting format being developed by the Learner Verification Task Force is worth considering. We think, however, that in addition to, or in lieu of, such an abbreviated report, publishers should offer, or keep available for inspection, such raw data as copies of instructional material in each of its developmental stages, transcripts of interviews with learners and documentation of the reasoning process used to translate learner feedback into each of the revisions made, copies of tests used and the actual test answer sheets completed by the learners, etc.

Several options for enforcement might be imagined, ranging from full reporting of all raw data for each instructional material through an abbreviated report for each material plus agency spot-checking of raw data of randomly-selected material to brief reporting of a random selection of any one publisher's materials. Budgetary constraints, of course, would probably

be the crucial determinant in the selection of enforcement options....

Sincerely,

Hannah N. Geffert

Hannah N. Geffert

Daniel M. Schember

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HNG&DMS:dms

APPENDIX I

Association of American Publishers, Inc.

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S. T. ISAACS

IMPROVING THE QUALITY OF INSTRUCTIONAL MATERIALS

A statement on program validation
and learner verification by the
School Division of the
Association of American Publishers

As part of the educational community, American publishers have always assumed responsibility for developing effective learning materials, just as teachers and school administrators have assumed responsibility for using these materials effectively in the classroom.

Publishers have relied historically on a variety of procedures to ensure the quality of materials and their effectiveness in use. They have drawn extensively on author teaching experience and knowledge of the field, on the opinions of specialists, on editorial judgment, on experimental use, field testing and pilot tryouts. They have kept alert to the successful and even not-so-successful happenings in education, to the social pressures affecting the schools, and to the needs expressed in professional journals and at professional conferences. Out of this continuing interaction of schools and publishers have come instructional materials which are superior in quality and effectiveness to those available to schools in any other country in the world. Today the American teacher is free to select from a great variety of learning materials in print and other media, those that best serve the individual and collective needs of the students in any classroom.

Publishers welcome public support for the improvement of the quality of learning materials, whether textbooks, films, or other instructional aids. Viewed in historical perspective, the concern for assurance of "learning verification" and "program validation" is but an evolutionary step in the history of school

publishing. It is a step toward more formalized procedures in reporting to schools what individual publishers are doing to improve the content, reliability, and effectiveness of their materials.

The past decade has seen a substantial shift in emphasis from teaching to learning; that is, from concern with "inputs" or course content to concern with "outcomes" or what the learner carries away with him after the course is over; from assessment of curriculum to assessment of pupil performance. One consequence of this has been increased attention to evaluating learning materials in relation to the pupil outcomes -- "verifying" the learning, thus "validating" the learning tools. Publishers recognize their responsibility to participate actively in this evaluation.

The majority of publishers, however, share the doubts of many educators when the terms like "program validation" or "learner verification" are used simplistically to suggest that learning materials alone can guarantee specified levels of pupil performance. Some account must be taken of the nature of the students, the conditions in any classroom, the outside influences on learning, the preparation of teachers, and the ways in which the materials are used. Neither research nor experience supports the assumption that learning materials can be the sole determinant of pupil performance. Nor can teachers be evaluated only by comparing the performance of their pupils to the performance of other pupils using the same materials.

Although publishers question current popular references to "validated" programs, they support the concept of continuous evaluation and improvement of materials both before and after publication. They recognize that the effective use of materials is a dual responsibility of the publisher and the user. They continue to accept responsibility for developing materials that can be proved effective with targeted learners when used appropriately for the purposes for which the materials were created.

The new emphasis in the schools on pupil "outcomes" or "learnings" clearly requires publishers to specify learning outcomes and to recommend ways of ensuring achievement of desired results. Cognitive outcomes are important in certain systems of materials insofar as the materials themselves contribute to the achievement of goals. Affective outcomes may be even more crucial. (How have pupils changed their views? What are their attitudes toward the subject? Toward patterns of life? What do teachers think?) Even while recognizing the significance of assessing materials more carefully in relation to pupil outcomes, publishers know that teacher attitudes toward materials may be vital in determining how materials are used.

Publishers find that analyses of student performance based on norm-referenced or criterion-referenced tests cannot be used as the sole basis for determining the quality and effectiveness of materials. Equally important are data on student attitudes, the nature of the community and school environment, teaching conditions, the local philosophy of education, and related factors which influence learning outcomes.

Schools can expect publishers to make available accurate information on how products have been designed, developed, tested, and revised, on how materials may be used most appropriately, on how students perform and teachers react, and even on plans for refining and improving materials after publication. Verification statements from publishers should indicate that teachers and learners have used the materials successfully and the conditions under which programs have been evaluated.

Schools should recognize further that the quality of such verification studies may have no relationship to the quantity of data. A few carefully selected and controlled pilot studies may yield more incisive and useful information on how a program works than extensive surveys and statistical analyses which provide only general data. Moreover, for many programs the most valuable evaluative

efforts will occur after publication when teacher education and other support systems are fully developed.

Publishers welcome the opportunity to explain how they maintain quality during product development, how they monitor effectiveness, and how they improve these products through subsequent revision. It must be recognized however, that the nature and purpose of individual systems of learning materials vary and so will the appropriateness of the techniques used to evaluate the product. A variety of theoretically sound techniques are used in materials validation, not just a single strategy. The publisher who assumes responsibility for the quality of learning materials must be the sole judge of where to evaluate, the conditions for evaluation, and the criteria and personnel to be used in evaluation. He should not be expected to use any specific kind of validation instrument, whether appropriate for the program or not, nor to replicate a validation trial in any school system that may so request. Each publisher individually has the right, based on his own studies and own criteria, to determine when and how to evaluate and when to revise consistent with sound validation techniques.

For their part, schools can contribute substantially to the process of improving the quality and use of learning materials by continuing to cooperate closely with publishers, making available to publishers data from their own studies of product use, assisting publishers in arranging prepublication field testing and post-publication studies of materials, encouraging publishers' representatives to talk with students and teachers, and providing opportunities for publishers to explain to teachers the efforts being made to improve materials.

Available information suggests that U.S. publishers are spending about one to two percent of their income on pilot tryouts, field tests, post-publication studies, and other research activity associated with validation. Such an expenditure represents from 15 to 30 percent of total editorial investment and, as a

percent of revenue, about equals the percentage of funds expended each year by school systems for the purchase of instructional materials. Because much of this investment is made early in the development process, its impact is particularly significant.

Publishers also pay sizable royalties to authors who are up to date on the latest research. In addition to their investment in editorial analysis, program design, and production costs, still another sizable investment is required to supply schools with examination copies of materials, provide manuals and materials for teachers, offer schools assistance in teacher-education activities, and work with schools in installing and servicing programs. Such services are offered by publishers to improve, assure, and maintain effective use of materials. But each service offered by publishers has to be evaluated carefully at a time when the funds expended by schools for instructional materials are exceedingly limited. As a percent of the total school budget, expenditures for instructional materials have been declining for more than a decade. Publishers must, therefore, evaluate added developmental costs and services in relation to schools' willingness and ability to pay for such activities through increased cost of instructional materials. The larger and more comprehensive the instructional program, the more extensive the program of materials validation that can be supported. Widespread use of many suggested validation models involving frequent revision of published programs would substantially increase the overall cost of learning materials to schools.

American publishers of materials for the schools will continue to respond to the educational priorities of the schools as they have for the past 150 years. Out of this continuing partnership between publishers and schools will come stronger, more reliable, and more effective materials. The ultimate guarantee that publishers will continue to produce higher quality materials is the fact that educational publishing is highly competitive. Excellence is required in product development in order to produce materials that will be accepted by professionally trained educators and used successfully by students.

EA

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Quality Control for Instructional Materials

The National Institute of Education
U.S. Department of Health, Education and Welfare
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QUALITY CONTROL FOR INSTRUCTIONAL MATERIALS:

Legislative Mandates of Learner Verification and Implications for Public Education

*Members of a Seminar at the Harvard Graduate School of Education**

Introduction

Since World War II, the American educational publishing industry has been transformed by the introduction of new technologies and by rapidly increasing demands for materials of all kinds. The traditional school textbook has been supplemented by a variety of products, such as film-strips, workbooks, and programmed and computer-assisted curricula. The total number of instructional materials produced in the United States rose from only 10,000 in 1951 to over 200,000 in 1971,[1] while public and private school expenditures on elementary and secondary instructional materials and equipment reached $1.9 billion in 1973-74.[2]

At the same time, the public has become increasingly concerned with the quality of education in the public schools and

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1 *Hearings on H.R. 33, H.R. 3606 and Other Related Bills Before the Select Subcomm. on Education of the House Comm. on Education and Labor*, 92d Cong., 1st Sess. 335-36 (ERIC Document ED 059 612, at 2-3, 1971).

2 Hoffman, *Spending for Instructional Materials and Equipment*, 18 School Management, Oct. 1974, at 10.

has begun to demand accountability in education.[3] This trend toward accountability in the public schools has led to calls for the improvement of the educational materials used. One such call comes from Kenneth Komoski, the Executive Director of the Educational Products Information Exchange Institute (EPIE).[4] Komoski advocates the implementation of a process which he calls Learner Verification and Revision (LVR). He defines LVR in the following way:

> The concept of learner verification and revision refers to an empirical process of data gathering and analysis aimed at assessing, improving, and maintaining the teaching-learning effectiveness of an instructional material — beginning with its earliest developmental version through all subsequent revisions — until such time as the material is no longer published. Development of materials should be informed by results of trial use with appropriate students; evaluation of whether those students learn what is intended (and if not, why not) should form the basis for refinement and revision before the material is marketed. Then, once the material is on the market, the producer should systematically monitor its performance "in the real world" so that it may be revised and improved as the results of continuous empirical verification indicate.[5]

Essentially, Komoski's idea of LVR asserts that materials will be better if they are tested out with students, and revised on the basis of problems experienced by those students in learning from the materials.[6] The process involves teachers and learners in the development of the materials, as well as in the pre-publication and post-publication evaluation.

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3 *See* text accompanying notes 40-72 *infra*.

4 EPIE is a nonprofit corporation chartered by the Regents of the University of the State of New York whose purpose is "to provide information and counsel based on impartial, independent studies of availability, use and effectiveness of educational materials, equipment, and systems . . . [and] to facilitate the making of informed rational evaluations of specific products by the educational consumer." Its executive director is P. Kenneth Komoski. Its general offices are at 463 West St. N.Y., N.Y. 10014.

5 *Id.* at 11.

6 Komoski differentiates LVR from "validation" studies in which producers state that learners do, in fact, "learn from their products." Remarks by P. Kenneth Komoski, Educational Marketer Days, June 20, 1974, at 5-6 (on file with *Harvard Journal on Legislation*) [hereinafter cited as Remarks of Komoski].

Komoski envisages a process of evaluation going well beyond the more traditional methods of student testing and teacher comments.[7] The LVR process will apply not only to the content of instructional materials, but also to the context of their use. This may mean that publishers will provide in-service training to teachers in the use of the materials, and will develop teaching aids such as teachers' manuals, student handbooks, and laboratory manuals.

The roots of LVR are found in the development of the much acclaimed Physical Sciences Study Committee (PSSC) program,[8] whose efficiency and success at meeting students' needs were attributed to continuous fine-grained evaluation and revision.[9] The underlying assumption of the PSSC program and many of its successors was that carefully designed materials tailored to a student's competencies and interests could efficiently instruct[10]

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7 P. Kenneth Komoski & D. Eliott, Suggested Guidelines for the Learner Verification of Instructional Materials, EPIE Institute, New York, Nov. 20, 1973 (EPIE Institute, New York). Primary data is gathered directly from learners and may include formal observation, written questionnaires, individual and/or small group interviews, as well as normed and criterion-referenced tests. Secondary data from teachers, supervisors, parents and other participants and observers are acceptable. Testing may involve collecting background data such as achievement and ability scores and information on student self-concept and student level of interest in school and subject matter. Some of this data gathering would require that publishers spend time in classrooms.

8 The Physical Science Studies Committee organized at MIT in 1956 by Professor Jerrold R. Zacharias became the model for future innovative programs, and its underlying assumptions about the instructional process, testing and development set the tone for subsequent research and development. The program emphasized an inductive "discovery" approach in learning, openly breaking away from rote-memory and content-oriented teaching strategies. *See* P. Marsh, The Physical Science Study Committee: A Case History of Nationwide Curriculum Development 1956-1961 (1964) (unpublished thesis in Harvard Graduate School of Education Library).

9 Extensive and intensive periods of trial and experimentation were deemed necessary parts of the design and development of the program to eliminate gross errors of conception or execution. Course objectives were of an empirical nature designed to influence the way the course was taught. Not only were teachers involved through in-depth training in the use of the materials, but the students themselves became important sources of feedback. Feedback in this context refers to isolation of areas of difficulty for the purposes of revising the materials with the general goal of tailoring the materials to a learner's needs and abilities.

10 *See* Skinner, *The Science of Learning and the Art of Teaching*, 24 HARV. ED. REV. 86 (1954). Skinner placed primary emphasis on observable behavior and introduced the "teaching machine" with predictions of efficient and successful skill

and thus relieve the teacher of the full burden of success and failure.[11] Thus, the process of LVR does not appear to be new; in fact, several major publishers claim that they have been engaging in LVR or its equivalent for a number of years.[12]

Komoski, however, goes beyond a call for the voluntary introduction of LVR by publishers and advocates that states require all publishers to conduct LVR on all materials offered for sale.[13] Because of the magnitude of public expenditures on instructional materials, states have long exercised control over the process of selection and purchase of materials for use in their public schools.[14] In order to understand the proposals for mandated LVR, therefore, it is necessary to review the state instructional materials selection statutes which provide the framework in which textbooks and other materials move from publishers to the final consumers, local school districts, teachers, and students.

Initially, books for use in schools were supplied by the parents. After 1821, states began to require uniform adoption within a school or school district, but they granted local school districts broad authority to select and purchase instructional materials with little or no state-level control.[15] Twenty-one states still permit their local school districts complete control over instructional

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acquisition. Programmed instruction was born. From the revision of textbooks to the creation of filmstrips to highly sophisticated computerized systems, the information to be transmitted to the learner was broken into a series of logical and incremental steps designed to bring the students from one conclusion to the next, gradually building "learning." Knowledge was quantitative and expressed in "responses" which were elicited and reinforced in a consistent predictable fashion.

11 The development seemed especially important because the teacher shortage of the 1950's and 1960's made it impossible to provide individualized instruction without supplementary materials that could teach skills in a programmed fashion or capture the student's interest such that independent study would be possible.

12 Holt, Rinehart & Winston, Inc., Learner Verification Plans Report Number 1, Jan. 1975 (on file with *Harvard Journal on Legislation*). *See also* Sigel, *General Learning*, 1 SAT. REV. EDUCATION, May 1973, at 46, 47, where the author states that General Learning Corporation, McGraw Hill, Xerox, SRA (a subsidiary of IBM) and Westinghouse Corporation already practice the equivalent of LVR.

13 *See, e.g.*, Remarks of Komoski, *supra* note 6.

14 As of 1854, two states had vested mandatory initial textbook adopting authority in a state agency; by 1957, the number had risen to 23. J. Hall, A Study of the Development of Legislation Affecting the Selection of Textbooks in the United States 231 (1958) (unpublished thesis in Harvard Graduate Sch. of Educ. Library) [hereinafter cited as Hall].

15 *Id.* at 293.

materials acquisition,[16] and five others grant substantial local autonomy.[17]

Beginning in the 1880's, states began to assert greater control, first over elementary school materials and later over secondary school items.[18] One method combined state adoption with local option: the state, through a state agency, adopted a list of textbooks and other materials which it considered appropriate for use in various grades and subject areas and then local school districts were permitted to select materials from the state adoption lists. Some statutes strictly limited the number of items which could be listed for a given grade level and subject;[19] others allowed unlimited numbers of items to be listed, suggesting that the state agency might do little more than screen out the most clearly inadequate items.[20] Currently, eleven states provide for state adoption or listing and local option.[21]

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16 Those statutes permitting local adoption are: ALASKA STAT. § 14.07.040 (1974); Colorado by omission of legislation; CONN. GEN. STAT. ANN. § 10-228 (Supp. 1975); IOWA CODE ANN. § 301.1 (Supp. 1974); KAN. STAT. ANN. § 72-4107 (1972); ME. REV. STAT. ANN. tit. 20, § 161 (1964); MD. ANN. CODE art. 77, § 67 (1975); MASS. GEN. LAWS ANN. ch. 71 § 48 (Supp. 1975); MICH. COMP. LAWS ANN. § 340.882 (1967); MINN. STAT. §§ 123.35, 126.18 (1971); NEB. REV. STAT. §§ 79-4, 118 (1971); N.H. REV. STAT. ANN. § 189:16 (1964); N.J. STAT. ANN. § 18A:34-1 (1968); N.Y. EDUC. LAW § 701 (McKinney Supp. 1974); PA. STAT. ANN. tit. 24, § 8-801 (1962), *id.* § 8-803 (Supp. 1974); R.I. GEN. LAWS ANN. §§ 16-1-9, 16-2-11 (1969); S.D. COMPILED LAWS ANN. § 13-34-16 (Supp. 1974); VT. STAT. ANN. tit. 16, § 3743 (1968); WASH. REV. CODE ANN. § 28A.58.103 (Supp. 1974); WISC. STAT. § 118.03 (1971); and WYO. STAT ANN. § 21.1-181 (Cum. Supp. 1973).

17 ALA. CODE tit. 52 § 433(12) (Cum. Supp. 1973) (providing local option for cities with population greater than 40,000 and possible exemption for other large localities); CAL. EDUC. CODE § 9600 (West 1975) (high schools only); DEL. CODE ANN. tit. 14 § 122(6) (Cum. Supp. Pamphlet 1970) (school districts apply set of criteria adopted by State Board of Education to select materials); MONT. REV. CODES ANN. § 75-7603 (1971), § 75-7604 (Supp. 1974) (school districts select textbooks only from licensed dealers); *id.* § 75-7604 (Supp. 1974) (same); ORE. REV. STAT. §§ 337.050, 337.141 (1974) (local option for localities with greater than 20,000 school population or with state permission).

18 State authority over initial elementary textbook adoption increased rapidly from 1852 to 1904; by 1917, 25 states provided such authority. *See* Hall, *supra* note 14 at 297-98. State-level adoption of secondary books started twenty years later and peaked in 1947 with 19 states. *Id.* at 298.

19 *See, e.g.*, KY. REV. STAT. ANN. § 156.435(1) (Supp. 1974).

20 Idaho and Oregon put no limit on the number of books the textbook commissions may approve. IDAHO CODE § 33-118 (1963); ORE. REV. STAT. § 337.050 (1974).

21 Those provisions which require state adoption or listing and local option are: ALASKA STAT. § 14.07.050 (1971); CAL. CONST. art. 9, § 7.5 and CAL. EDUC. CODE § 9400 (West 1975) (elementary schools only); IDAHO CODE § 33-118 (1963); ILL. REV.

The second method of asserting state control involved outright state adoption. A state agency simply specified texts and other materials for each grade level and subject. In some cases, the state made these materials available to the local school districts free of charge;[22] in other cases, local districts were still required to purchase the materials with local funds, either directly or through a central state purchasing agency.[23] Fourteen states currently impose full state adoption,[24] and two, partial state adoption.[25]

Komoski's proposals link the requirement of LVR to state selection statutes. He proposes that states require publishers to submit to the state instructional materials selection authorities proof that each material offered for sale in the state has been subjected to LVR. Two states, California and Florida, have already passed legislation to this effect. California enacted statutory provisions concerning LVR in 1972,[26] as part of an overall revision of Division 8 (Instructional Materials) of the California Education Code.[27] Florida followed suit in 1974[28] as part of a general revision of its statutory provisions concerning textbook selection.[29] The Lawyers' Committee for Civil Rights Under Law (hereinafter Lawyers' Committee), operating under a grant from the National Institute for Education, has developed a Model

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STAT. ch. 122, § 28-6 (1973); KY. REV. STAT. ANN. §§ 156.440, 156.447 (Supp. 1974); MISS. CODE ANN. § 37-43-31 (1972); MO. ANN. STAT. § 170.051 (Vernon 1975); N.D. CENT. CODE § 15-43-04 (1971); OHIO REV. CODE ANN. § 3329.01 (1972); VA. CODE § 22-296 (1964), *id.*, § 22-318 (Cum. Supp. 1972); and W. VA. CODE ANN. § 18-2A-8 (Supp. 1974).

22 *See, e.g.*, N.M. STAT. ANN. § 77-13-5 (1968); MISS. CODE ANN. § 37-43-1 (1972).

23 CAL. EDUC. CODE § 9621 (West 1975) (high schools only).

24 ARIZ. REV. STAT. ANN. §§ 15-1101-1103 (Supp. 1974); ARK. STAT. ANN. §§ 80-1702-1730 (1960); FLA. STAT. § 233.16 (1973); GA. CODE ANN. § 32-707 (1969); IND. CODE §§ 20-10-33, 20-10-35 (1971); LA. REV. STAT. ANN. § 17:7 (West Supp. 1975); NEV. REV. STAT. § 390.140 (1973); N.M. STAT. ANN. § 77-13-8 (1968); N.C. GEN. STAT. § 115-206.2 (Cum. Supp. 1974); OKLA. STAT. tit. 70, § 16-102 (1971); S.C. CODE ANN. § 21-456 (1962), *id.*, § 21-45 (Cum. Supp. 1974); TENN. CODE ANN. § 49-2008 (Cum. Supp. 1974); TEX. EDUC. CODE ANN. § 12.11 (1972); UTAH CODE ANN. § 53-13-3 (1970).

25 ALA. CODE tit. 52, § 433(7) (Cum. Supp. 1973); ORE. REV. STAT. §§ 337.050, 337.141 (1974).

26 CAL. EDUC. CODE §§ 9234, 9426, 9600 (West 1975).

27 Chs. 929, 1233 [1972] CAL. STAT. 1655, 2380.

28 Ch. 74-337, §§ 1, 11 [West Supp. 1974] FLA. STAT. 824, 831.

29 Ch. 74-337 [West Supp. 1974] FLA. STAT. 823.

Statute on Instructional Materials Selection and LVR.[30] The California statute, the Florida statute, and the draft of the Model Statute, all choose a single means of inducing publishers to engage in LVR: prohibition of the sale of any instructional materials to public schools within the state unless those materials have been subjected to LVR in accordance with statutory standards.[31]

The success of LVR advocates in obtaining statutory mandates in California and Florida suggests that LVR could be on its way to nationwide adoption.[32] LVR has its proponent in EPIE which, though not directly involved in drafting the California legislation, has worked diligently to assist the development of regulations in that state.[33] EPIE not only helped to draft the Florida statute, but testified on its behalf.[34] The Lawyers' Committee is also engaged in assisting the California Dept. of Education with LVR regulations.[35]

Both California and Florida have state textbook adoption statutes,[36] and it seems logical to expect that LVR could spread most

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30 The Lawyers' Committee for Civil Rights under Law, Washington, D.C. was formed in 1963 at the request of the President of the United States to study and insure the just implementation of Civil Rights legislation. The Committee's offices are located in major cities across the United States.

The Lawyers' Committee is currently working on model statutes and administrative regulations in selected areas for policy-makers and state legislators interested in the reform and improvement of educational standards in their states. Project co-directors, Robert J. Harper II and Attorney Daniel M. Schember, incorporated the concept of learner verification and revision in a Model Statute on Instructional Materials Selection and LVR, which they submitted for critiquing to, among others, the members of a seminar taught by Attorney Walter J. McCann at the Harvard Graduate School of Education.

The National Institute of Education, an agency within the Education Division of the United States Department of Health, Education and Welfare, has financed the project during Fiscal Year 1974-75.

31 CAL. EDUC. CODE §§ 9426, 9600 (West 1975); ch. 74-337, § 11 [West Supp. 1974] FLA. STAT. 831.

32 *Cf.* Crane, *The "California Effect" on Textbook Adoptions*, 32 EDUC. LEADERSHIP 283 (1975).

33 *See* Komoski & Eliott, *supra* note 7.

34 Statements by P. Kenneth Komoski, Law and Education Seminar, Harvard Graduate School of Education, Feb. 18, 1975 [hereinafter cited as Statements by Komoski].

35 Letter from Hannah N. Geffert & Daniel M. Schember, Lawyers' Committee for Civil Rights under Law, to Dr. Wayne Henderson of the California State Dept. of Education, Feb. 3, 1975 (on file Harvard Journal on Legislation).

36 CAL. CONST. art. 9, § 7.5; CAL. EDUC. CODE § 9400 (West 1975); FLA. STAT. § 233.16 (1973).

quickly to other adoption states. Even without widespread state LVR statutes, LVR could soon have nationwide impact because the textbook industry is dominated by national publishing companies.[37] A large portion of that market is provided by the three largest adoption states, California, Illinois, and Texas.[38] Adoption by one of these states assures a substantial volume of sales which few, if any, individual school districts in nonadoption states could match. As a result, it is argued, national publishers aim especially at those three states, and feel obliged to comply with their statutory standards.[39] If all three impose LVR requirements, publishers could be effectively obliged to conduct LVR on all their instructional materials, regardless of the policies of other states.

The California and Florida LVR statutes suggest on their face that insufficient attention was paid to the potential problems raised by LVR. Neither statute addresses the issues of student privacy raised by a statute which mandates extensive testing, interviewing, and other data collection concerning students and their academic performance. Neither statute confronts the objections likely to be raised by teachers opposed to any interference with their classroom autonomy. The possible effects of mandated LVR on the concentration of the publishing industry have not been explored; the potential costs of LVR have not been adequately assessed and compared with the costs of other educational initiatives which might be undertaken. In order to provide a more adequate basis for judging proposals for legislatively-mandated LVR, this article will: 1) relate LVR to the basic trends which have shaped education in the post-war era; 2) analyze the educational publication industry and its political maneuvering; 3) critique the California and Florida statutes to obtain an understanding of the problems encountered in translating theory into statutory language; 4) identify problems not foreseen by either California or Florida legislators; and 5) suggest alternatives to legislative mandating of LVR.

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37 *See* text accompanying note 83 *infra*.

38 Hoffman, *supra* note 2 at 10, 11. Estimated expenditures for instructional materials and equipment in public and private elementary and secondary schools for 1973-74 were highest in California at $209,909,000. For adoption states, Illinois followed at $119,098,000 and Texas at $87,617,000.

39 Statements by Komoski, *supra* note 34.

I. Movement Toward Accountability in Education: Systems Approaches

Recent technological innovations in elementary and secondary education have been accompanied by efforts to maximize the efficiency and learning effectiveness of schools through "systems approaches," which are broadly defined as attempts to view the total performance of an organization in terms of the interrelation of its component parts and interaction of the whole with its environment.[40] Development of workable systems frameworks for education parallel previous efforts within military, industrial, and commercial institutions.[41] One of the major systems models, systems engineering, resulted from Basic Operations Research during World War II.[42] Systems engineering implied the integration of all managerial and technical functions for optimum production, and, in addition, the research and design of subsystems which were integrated into the existing production system. This framework was effectively used in responding to needs arising from increasing reliance on rapid technological innovation in military production.[43] Some systems engineering concepts were applied to the design of instructional systems for Air Force vocational and technical training programs; programmed instruction and computer simulation models were the result.[44]

40 Systems approaches refer to management frameworks for determining goals and objectives, selecting the best method-means, and performing the task to achieve desired results. For a full discussion, see J. McManama, Systems Analysis for Effective School Administration 17-59 (1971); Immegart, *The Systems Movement and Educational Administration*, in Systems Approaches to the Management of Public Education 2 (G. Mansergh, ed. 1969). For background discussion of theoretical and applied aspects of systems approaches, see R. Johnson, F. Kast, & J. Rosenzweig, The Theory and Management of Systems 3-15 (1963).

41 A review of the literature reveals a variety of management frameworks arising from the "Systems Approach" movement including Operations Research, Information Theory, Mathematical Programming, and Systems Engineering. Within the various frameworks a number of specific management techniques or models have evolved, including the Critical Path Method, PPBS, and Cost Benefit Analysis. *See* Immegart, *supra* note 40 at 4-9. Some sources combine discussion of frameworks and specific models. *See, e.g.*, New Decision-Making Tools for Managers (E. Bursk & J. Chapman, eds. 1963).

42 Operations Research is frequently cited as the first attempt at applying systems thinking to management decision-making. It stressed use of mathematical models by interdisciplinary researchers. R. Johnson, F. Kast, & J. Rosenzweig, *supra* note 40 at 217.

43 *Id.* at 117-135, 259.

44 L. Silvern, Systems Engineering of Education I: The Evolution of Systems

The educational engineering model is a refinement of the Air Force training programs and has inherited its conceptual base from systems engineering.[45] The core of educational engineering, as applied to education management functions, lies in its mechanisms for assessing student performance in terms of dollars expended.[46] According to Leon Lessinger, private industry, with its considerable experience and expertise in this area, can assist local educational agencies, if they can ". . . accept the idea that it is desirable and possible to pin educational objectives to measurable student performance as a method for determining program costs vis-a-vis program effectiveness. . . ."[47]

Another, more recent, systems model is the Planning-Programming-Budgeting System (PPBS) which was installed as a planning facilitator in the Department of Defense in 1961. PPBS ties budgeting to planning through system-wide analysis of the significant costs and benefits of alternative policy approaches.[48] As a budgeting tool, PPBS aims to provide information on programs; this is a step beyond the traditional sense of budgeting in terms of objects or services to be purchased.[49] As a planning tool, PPBS

THINKING IN EDUCATION 93, 121, 122 (1965). For broad discussion of the theoretical application — prior to 1965 — of engineering concepts to design of grades K-12 instructional programs, see *id.* at 70-72, 96-103.

45 Lessinger, *Engineering Accountability for Results in Public Education*, in ACCOUNTABILITY IN EDUCATION 28-30 (L. Lessinger & R. Tyler, eds. 1971), Straubel, *Accountability in Vocational Technical Instruction*, 11 EDUCATIONAL TECHNOLOGY, Jan. 1971, at 43.

46 For a discussion of conceptual and operational components of educational engineering, see Lessinger, *supra* note 45 at 28-41; L. LESSINGER and S. BURT, VOLUNTEER INDUSTRY INVOLVEMENT IN PUBLIC EDUCATION 144-147 (1970).

47 L. LESSINGER and S. BURT, *supra* note 46 at 147. Leon Lessinger, former Associate Commissioner of the U.S. Office of Education for Elementary and Secondary Education, and former President of the Aerospace Education Foundation, advocates close cooperation of industry and school systems. He sees as one positive step the recent establishment of a national organization, Industry-Education Councils of America, with northern and southern California and Arizona chapters. Furthermore, he sees the need for increased federal research and development funds, which would allow those in the education "industry" and in research and development laboratories to update and/or evaluate new technologies. *Id.* at 156: Lessinger, *supra* note 45 at 10.

48 SUBCOMM. ON NATIONAL SECURITY AND INTERNATIONAL OPERATIONS, SENATE COMM. ON GOVERNMENT OPERATIONS, 90TH CONG., 1ST SESS., PLANNING-PROGRAMMING-BUDGETING INQUIRY 9-12 (Comm. Print 1970).

49 RHODE ISLAND DEPARTMENT OF EDUCATION, PROGRAM BUDGETING — A PRACTICAL FIRST STEP WITHIN PPBS 4-7 (1975) [hereinafter cited as R.I. DEPT. OF EDUC.]; Hartley, *Educational Planning, Programming, and Budgeting: A Systems Approach*, in SYSTEMS APPROACHES TO THE MANAGEMENT OF PUBLIC EDUCATION 34-35 (G. Mansergh, ed. 1969).

aims to provide clarity of goals; this is to be accomplished by developing objectives with measurable performance standards, so needs assessment is a necessary precondition for this aspect of PPBS.[50] In terms of programming, PPBS aims to design programs and integrate them within the organizational structure, classifying programs structurally so that their interrelationships are not lost from view in planning to meet goals and objectives.[51]

Systems engineering and PPBS presuppose goals and objectives stated in measurable terms and assess the impact of monies spent on reaching these goals.[52] This approach can be difficult to apply to education because of the uncertain state of the art in defining the parameters of learning.

Nevertheless, the accountability movement of the mid-1960's linked systems engineering and PPBS to public education. Some form of accountability has always been a part of education,[53] but in the mid-1960's three broad developments coalesced to strengthen public scrutiny of the educational system:[54] 1) an increase in the proportion of average family income spent on taxes; 2) social recognition that a substantial proportion of young people had not met literacy standards required by the job market; and 3) the success of industry and defense establishments in using management procedures to increase effectiveness and efficiency. Public criticism focused on student academic achievement and teacher effectiveness which resulted in demands for the assessment of students, the evaluation of teachers, and the accountability of public school personnel for student performance.[55] In response, the Education Commission of the States[56] initiated the

50 R.I. DEPT. OF EDUC., *supra* note 49 at 3-4.

51 R.I. DEPT. OF EDUC., *supra* note 49 at 4-5.

52 Tyler, *Accountability in Perspective*, in ACCOUNTABILITY IN EDUCATION 2 (L. Lessinger & R. Tyler, eds. 1971); L. Lessinger, *supra* note 45 at 29. *See also* SUBCOMM. ON NATIONAL SECURITY AND INTERNATIONAL RELATIONS, *supra* note 48 at 9-12.

53 *See, e.g.*, Olson, *Who Owes What to Whom?* 5 PLANNING AND CHANGING, Summer, 1974, at 116.

54 Tyler, *supra* note 52 at 1.

55 *See, e.g.*, Olson, *supra* note 53 at 116.

56 The Education Commission of the States is the governing board of the Compact for Education, a cooperative effort supported by more than forty states. The Commission is composed of representatives from all levels of education appointed by state governors. It directs the work of the Compact, whose purpose is to centralize research, data collection and assessment studies needed by the states, to disseminate information among the states, and to act as a stimulus for state action. The Executive Director of the Commission is Mr. Wendell H. Pierce. The Commission's offices are located at 1860 Lincoln St., Denver, Colorado 80203.

National Assessment of Educational Progress project, which began in 1969 to assess the nation's youth and adults in terms of their educational competence in a variety of subjects. At the same time the federal government encouraged the development of behavioral objectives, educational technology, and performance contracting, which extended industry's role in the accountability movement.[57] Addressing Congress in March, 1970, Richard Nixon said:

> School administrators and school teachers alike are responsible for their performance and it is in their interest as well as in the interest of their pupils that they should be held accountable. Success should be measured not by some fixed national norm, but rather by the particular school and the particular set of pupils. . . . We have, as a nation. too long avoided thinking of the *productivity* of the schools.[58]

The stress on educational productivity gave impetus to application of industry and defense management systems to classroom techniques.[59] Supporters claim that behavioral objectives and management techniques are appropriate to all areas of school instruction (affective and cognitive).[60] However, critics of the general notions of accountability, behavioral objectives, performance contracting, and programmed instructions focus on their restrictive tendencies.[61] Gerald Teller, for example, claims that

57 Terrel H. Bell, while acting U.S. Commissioner of Education in 1970, claimed that research, performance contracting, instructional technology, and information dissemination were the keys to effective education. The New Look of Federal Aid to Education, Speech to the Michigan Association of School Boards, Grand Rapids, September 24, 1970, in ACCOUNTABILITY IN AMERICAN EDUCATION 41, 44-47 (F. Sciara & R. Jantz eds. 1972). *See also* Austin & Holowenzak, *Component Costs of Educational Accountability*, 5 PLANNING & CHANGING, Fall, 1974, at 167.

58 Nixon, *American Education — Message from the President of the United States*, 116 CONG. REC. 5713, 5714 (1970).

59 Alpren & Baron, *The Death of the Behavioral Objectives Movement*, INTELLECT, Nov., 1974, at 103. Behavioral objectives were attractive because they provided a quantifiable method for assessing academic growth.

60 Keller, *Goodbye Teacher . . .*, 1 J. APPLIED BEHAVIORAL ANALYSIS 79 (1968), claims contingency management and reinforcement are more effective and efficient procedures than traditional methods of college instruction. R. MAGER, PREPARING INSTRUCTIONAL OBJECTIVES (1962), provides a program for preparing instructional objectives at any level. H. MCASHAN, THE GOALS APPROACH TO PERFORMANCE OBJECTIVES (1974), suggests a model which is applicable to affective and cognitive learning, though it also addresses problems with the model in fulfilling all learning needs.

61 Alpren & Baron, *supra* note 59, at 103, indicate that behavioral objectives are applicable and appropriate only for basic skill development and are inappropriate

accountability promotes a closed system of education which thwarts the child's natural creativity.[62] Others say that the closed system required by accountability denies the importance of the child in the learning process.[63] David Turney indicates that:

> Precise determination of learner gains requires rather rigid specification of learning goals, which often results in increased rigiditiy in the curriculum.
>
> Accountability is always easier to come by in closed systems, yet the best education appears to require open-ended patterns with minimal specificity.[64]

Further, Arthur Adkins points out that while judging teacher effectiveness by pupil performance may seem logical, other important variables — e.g., environment, intelligence, health, motivation — affect learning; since the teacher has no control over these variables, he should not be held responsible for their effects. Adkins also reaffirms the notion that some forms of learning are not easily quantifiable or measured, yet are important.[65]

It is clear that many of the ramifications of accountability remain uncertain at best and alarming at worst. Nonetheless, between 1963 and 1972, 23 states enacted legislation that authorized or mandated some type of educational accountability.[66] By

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and ineffective in other cognitive areas, i.e., creativity, etc. and the affective domain. They claim that behavioral objectives have been over-extended to nonquantifiable areas and that the method will lose credibility as a result. H. McAshan, *supra* note 60 at 1-2, who advocates behavioral objectives, is also cautious about over-extension:

> The use of behavioral objectives is not and never will be a panacea for solving major instructional problems. At best, the use of behavioral objectives can be a valuable tool that aids and motivates teachers in their instructional preparation and provides additional guidance to students so they may better achieve. At worst, behavioral objectives can be harmful in occupying too much teacher time and by confusing the real intents and values that should be achieved in learning situations.

62 Teller, *What are the Myths of Accountability*, 31 Educational Leadership, Feb. 1974, at 455, 456.

63 National Committee for Support of the Public Schools, News, June, 1971, at 1. A further implication may be that an accountability-constrained learning process may also thwart the teacher's spontaneity.

64 Turney, *A View from the Bridge: the Accountability Dilemmas*, 46 Contemporary Education, Fall, 1974, at 71.

65 Adkins, *An Accountability Strategy*, 56 Phi Delta Kappan 180 (Nov. 1974). *See also* Harrison, Jr. & Scriven, *"Does Evaluation Preclude Learning?"*, in Readings in Evaluation 35-38 (A. Fults, R. Lutz, & J. Eddleman, eds. 1972); Kindsvatter, *"Guidelines for Better Grading,"* in Readings in Evaluation, *supra* at 84-89.

66 Ovard, *The Practitioner's Guide to Research: Teacher Effectiveness and Ac-*

April, 1973, 16 additional states were considering some form of accountability legislation.[67] Both California and Florida have enacted accountability legislation.[68] California's Stull Bill, enacted in 1972, mandated accountability for teacher performance.[69] Arthur Olson has suggested that "[o]ther models [of evaluation and accountability] are likely to emerge, all in the spirit of ultimately improving the instructional program and providing information to the public, the man who pays the bill, on the quality of education in our schools."[70] One such model is embodied in the learner verification and revision legislation in California[71] and Florida,[72] which extends the concept of accountability to the publishers.

II. The Knowledge Industry

During the past twenty years, the "knowledge industry"[73] has grown enormously, and become a significant force in educational policy planning and evaluation. Several factors have contributed to this rapid development.

First, the "baby boom" of the post-World War II period caused a rapid rise in school enrollments[74] and a concomitant increase

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countability, 59 NASSP Bulletin, Jan. 1975, at 92. The 23 states are: Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin. Thirteen of these states have state testing or assessment programs; seven have PPBS; two have Management Information Systems; four have Uniform Accounting Systems; eight have evaluation of professional employees; and one, California, permits performance contracting. *Id.* at 92.

67 *Id.* at 91.

68 Cal. Educ. Code §§ 13485-13490 (West 1975); ch. 74-337 [West Supp. 1974] Fla. Stat. 1079; ch. 74-205 [West Supp. 1974] Fla. Stat. 579.

69 Cal. Educ. Code §§ 13485-13490 (West 1975).

70 Olson, *supra* note 53 at 119.

71 Cal. Educ. Code §§ 9234, 9426, 9600 (West 1975).

72 Ch. 74-337, §§ 1, 11 [West Supp. 1974] Fla. Stat. 824, 831.

73 A term coined by the growing diversity of participants and activities in the educational materials industry. *See* Institute for Educational Development, Research and Development in the Educational Materials Industries (Eric Document ED 043 232, 1969) [hereinafter cited as Research and Development]. *See also* F. Machlup, The Production and Distribution of Knowledge in the United States 44-48 (1962).

74 Between 1950 and 1960, school enrollments in the United States (kindergarten through grade 12) increased by 46 percent, from 28,660,000 to 42,012,000. U.S. Dept. of Commerce, Social and Economic Statistics Administration, Statistical Abstract of the U.S. 1974 109 (Bureau of the Census 95th Annual Ed. July, 1974).

in textbook sales.[75] In addition, increased enrollments contributed to serious shortages of teachers, time, and space,[76] creating strong pressures to find ways to educate children more efficiently. Consequently, use of school time, physical facilities, and personnel had to become more flexible.[77] Schools became increasingly receptive to technological innovations such as language labs, closed circuit and broadcast televisions, and programmed instructional devices.[78]

Second, the industry underwent substantial structural changes.[79] Between October, 1959 and May, 1962, fourteen major publishing companies made public offerings of their stock for the first time, either on the New York Stock Exchange or in the over-the-counter market.[80] At the same time, some thirty publishing companies were involved in mergers or acquisitions; the result was a substantial concentration of the publishing industry, including the publishing companies interested in educational materials.[81] Beginning in 1962, another trend became visible: the acquisition of publishing companies by large, diversified corporations such as Xerox, General Electric, IBM, RCA, and Raytheon.[82] As of

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75 R. Frase, *The Market for Book Manufacturing*, in BOWKER ANNUAL OF LIBRARY AND BOOK TRADE INFORMATION 167, 170-73 (19th ed. M. Miele 1974).

76 *See generally* THE REVOLUTION IN THE SCHOOLS (R. Gross & J. Murphy, eds. 1964).

77 *E.g.*, double shifts, different class scheduling, independent study, multi-age grouping, etc.

78 Finn, *Technology and the Instructional Process*, in THE REVOLUTION IN THE SCHOOLS 13 (R. Gross & J. Murphy, eds. 1964).

79 For a general discussion of the structural changes which occurred in the publishing industry in the early 1960's, see M. REDDING & R. SMITH, REVOLUTION IN THE TEXTBOOK PUBLISHING INDUSTRY (1963) (Report prepared for the Technological Development Project of the National Education Association).

80 *Id.* at 11. Table II, prepared by Roger Smith of *Publishers' Weekly*, lists the following companies, with their dates of first public sale of stock: American Heritage Publishing Company (Oct. 1961); Ginn and Company (Nov. 1960); Grosset and Dunlap (May 1961); Harcourt, Brace, now Harcourt, Brace & World (Aug. 1960); D.C. Heath and Company (May 1961); Richard D. Irwin, Inc. (Aug. 1961); Pocket Books (Jan. 1961); Random House (Oct. 1959); Row, Peterson, now Harper and Row (Feb. 1960); Science Research Associates (Nov. 1961); Scott, Foresman (Nov. 1960); Webster Publishing Company (May 1961); Western Publishing Company (Aug. 1960); and John Wiley & Sons (May 1962).

81 *Id.* at 12. For a listing of mergers, acquisitions and joint ventures since 1966, see Silberman, *Technology is Knocking at the Schoolhouse Door*, 74 FORTUNE, Aug., 1966, at 120, 123.

82 Silberman, *supra* note 81 at 123. Silberman summarizes the acquisitions as follows: Xerox acquired University Microfilms (1962), Basic Systems (1965), and American Publications (1965); Time, Inc. acquired Silver Burdett (1962); IBM acquired SRA (1964); Time, Inc. and General Electric acquired GLC (1965); Ray-

1974, the ten largest firms generated 57% of the revenues in the market for elementary and high school educational materials. Market shares were higher in the market for textbooks alone.[83]

Third, the federal government began to expend substantial funds on elementary and secondary education, areas which had previously been supported almost exclusively by states and local school districts. The launching of Sputnik in 1957 provided the first impetus for federal involvement; Congress responded hastily by passing the National Defense Education Act of 1958 (NDEA).[84] The Act authorized programs to revamp and improve education in areas of critical national concern, such as scientific and mathematical instruction.

Seven years later, responding to widespread criticism of the public schools' failure to educate large and identifiable groups adequately,[85] Congress took further action by passing the Elementary and Secondary Education Act (ESEA).[86] The major program authorized by ESEA, the compensatory education program, made funds available for the education of children with social and economic disadvantages,[87] thus providing an indirect stimulus to the educational materials industry by infusing new funds into the schools.[88] Two smaller programs enacted by ESEA,

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theon acquired Edex (1965), Page Bell (1965), Macalaster Scientific Corp. (1965), and D.C. Heath (1966); RCA acquired Random House (1966); CBS acquired Creative Playthings (1966); and Cowles acquired Educators' Association (1962) and College Publishing Corp. (1966).

83 8 KNOWLEDGE INDUSTRY REPORTS, Dec. 15, 1974, at 3.

84 National Defense Education Act of 1958 (NDEA), Pub. L. No. 85-864, 72 Stat. 1581. Title III, 20 U.S.C. §§ 441-444, 451-455 (1970), provides financial assistance for the strengthening of instruction in science, mathematics, modern foreign languages, and other critical subjects. It is of special interest to elementary and secondary educational materials producers because it permits expenditures for library and other instructional materials. *See* NDEA Title III, § 303(a), 20 U.S.C. 443(a).

85 *See, e.g.*, J.S. COLEMAN, ET AL., EQUALITY OF EDUCATIONAL OPPORTUNITY (1966); Silberman, *supra* note 81, at 121.

86 Elementary and Secondary Education Act of 1965 (ESEA), Pub. L. No. 89-10, 79 Stat. 27.

87 ESEA Title I, 20 U.S.C. 241a-241m (1970). Funds appropriated under ESEA Title I are made available to states and local educational agencies according to a formula based upon the number of children from low-income families resident in the state or local agency. Funds must be spent for special educational programs designed to meet the needs of educationally disadvantaged children in the state or district schools.

88 In fiscal year 1975, annual appropriations for Title I reached approximately $1.875 billion. 120 CONG. REC. H11270 (daily ed. Dec. 4, 1974).

however, directly stimulated the instructional materials producers: Title II[89] provides funds to states for the improvement of libraries and the purchase of library materials, and Title III[90] provides funds to states for the support of innovative educational projects. Library appropriations have been particularly crucial to the industry; an increasing portion of the funds for the growing audio-visual (A-V) market has come from ESEA Title II. Estimates reveal that approximately 45 percent of the appropriations for the library program for 1974 were spent on A-V materials.[91] Title III of ESEA has had a psychological as well as financial impact upon the industry because it offered attractive research and development opportunities in the electronics and communications industries where federal monies for defense research and development had been diminishing.[92] At the same time, new prospects for social science research from within the Department of Defense served to heighten industry interest in education.[93]

By the late 1960's, however, it became apparent that the population trends of the fifties were changing, and that the future of the educational materials industry was less promising.[94] Between 1963 and 1972, the United States experienced a diminished rate of population growth, and there are projections that it will decrease further between 1972 and 1980.[95] The effect upon text-

89 20 U.S.C. §§ 821-827 (1970).

90 20 U.S.C. §§ 841-847a (1970).

91 Frase, *supra* note 75 at 170.

92 Between 1953 and 1965, total (*i.e.*, federal and private) research and development funds increased almost 300%. Federal funding accounted for 55% in 1965. However, the annual rate of increase of federal funds dropped from 13% to 1% between 1962 and 1965, while the rate of increase of company funding rose from 7% increase to 11%. NATIONAL SCIENCE FOUNDATION, REVIEWS OF DATA ON SCIENCE RESOURCES 1, 4 (NSF 66-33, 1966).

93 In 1968, the Deputy Director for Research and Engineering in the Department of Defense declared that the Department now had developed broader responsibilities, aimed at such areas as "military assistance" and "pacification," which would require increased reliance upon the behavioral and social sciences. S. MELMAN, PENTAGON CAPITALISM 91-92 (1970).

94 One indication of this insecurity is the apparent reversal of the trend toward publishers' mergers and acquisitions by diversified corporations. General Electric sold General Learning Corporation to Scott Foresman in July, 1974 after losing $8.75 million on it. Litton Industries is reported to want to dispose of American Book Company, its textbook subsidiary. 8 KNOWLEDGE INDUSTRY REPORTS, July 31, 1974, at 1.

95 The rate of population growth slowed down between 1963-1972 by 14.2 per-

book sales is apparent; they constituted 1.5 percent of school expenditures in 1963 and 1.0 percent in 1973, and will probably decline further.[96] Not all instructional materials have fared equally: the sale of audio-visual materials has not decreased, probably reflecting a growing trend toward individualized instruction; however, neither computers nor teaching machines have made much of an impact.[97]

At the federal level, appropriations for elementary and secondary education programs, including Titles II and III of ESEA, have remained almost constant in recent years.[98] According to the Association of American Publishers (AAP), the percentage of certain federal expenditures for instructional materials has declined below standards recommended by the AAP and the National Education Association (NEA).[99] In addition, textbook publishers face stiff competition for limited resources from teachers and other educational staff, who have succeeded in raising salary levels in a labor-intensive enterprise.[100] These two factors are important constraints for educational marketers.[101]

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cent and is expected to decline another 8.3 percent by 1980. Frase, *supra* note 75 at 167. Enrollment figures reflect this trend: 49.7 million children attended elementary and high school in 1974, but the number is expected to drop to 45.1 million by 1982. 8 KNOWLEDGE INDUSTRY REPORTS, Jan. 15, 1975, at 8.

96 8 KNOWLEDGE INDUSTRY REPORTS, Dec. 15, 1974, at 2.

97 *Id.* at 2-3.

98 Appropriations for ESEA Title II amounted to $90 million in fiscal year 1972, $100 million in fiscal year 1973, and $90.25 million in fiscal year 1974. Appropriations for ESEA Title III in the same three fiscal years amounted to $146.4 million, $171.4 million, and $146.4 million, respectively. U.S. Dept. of Health, Education and Welfare, Justifications of Appropriations Estimates for Committee on Appropriations, Fiscal Year 1974, Volume VI, Education Division 1-45; *id.* Fiscal Year 1975, Volume V, Education Division 1-66. Under the provisions of Title IV of the Education Amendments of 1974, 20 U.S.C. 1801 *et seq.* (1975 Supp.), ESEA Titles II and III are consolidated into a new program of Libraries and Learning Resources, Innovation and Support. The combined appropriation for this program in the first year of its operation, fiscal year 1976, is $301,218,000. 120 CONG. REC. H11270 (daily ed. Dec. 4, 1974).

99 *Increasing Direct Support for Instructional Materials,* in ASSOCIATION OF AMERICAN PUBLISHERS, CRITICAL CONCERNS: 1975 (1975).

100 Frase, *supra* note 75 at 170; *cf. Increasing Direct Support for Instructional Materials, supra* note 99 at 1.

101 In addition to these factors, the Association of American Publishers cites marketing regulations which restrict the efficiency of marketing. These factors include: the practice of requiring filing fees to state adoption bodies which are not in every case refundable; unnecessarily diverse and complex bidding instructions; excessive demands for contextual changes, often by local groups; requirements of free samples; and reliance upon long-term fixed supply contracts even when costs increase as a result of inflation. *Eliminating Excessive Restrictions on Engaging in Business,* in CRITICAL CONCERNS: 1975 (1975).

Adverse economic trends have also resulted in increasing conflict between congressional commitment to federal education spending, and presidential desires to limit or cut federal budget outlays.[102] This was emphasized during the Nixon Administration by four vetoes of Office of Education appropriations acts,[103] and by unsuccessful presidential attempts to impound certain education funds.[104] As a result, publishers have begun to focus on the political realities of governmental funding; since 1969, the industry has been involved in supporting the Committee for Full Funding of Education Programs, a coalition of education, library, and other related organizations interested in maintaining federal funding levels for education programs.[105] These lobbying efforts have shown some success. In 1974, for example, President Nixon signed an appropriations bill of $6.024 billion, which represented $938 million above his budget proposal for the Office of Education.[106] A recent industry report advises educational marketers to increase their political activity this year.[107]

Publishers have also sought to improve their position by means of eliminating constraints on the educational materials industry imposed by state selection laws. The desirability of such changes

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102 Frase, *Five Years of Struggle for Federal Funds*, in BOWKER ANNUAL OF LIBRARY AND BOOK TRADE INFORMATION (19th ed. M. Miele 1974).

103 President Nixon vetoed H.R. 13111, 91st Cong., 1st Sess. (1969), the first Labor-HEW appropriations bill for fiscal year 1970, on January 28, 1970. The veto was sustained by the House. President Nixon subsequently vetoed H.R. 16916, 91st Cong., 2d Sess. (1970), the Office of Education appropriations bill for fiscal year 1971, on August 11, 1970. Both Houses of Congress voted to override the veto. President Nixon later vetoed H.R. 15417, 92d Cong., 2d Sess. (1972), the first Labor-HEW appropriations bill for fiscal year 1973, on August 16, 1972. The veto was sustained by the House. The President thereafter pocket-vetoed H.R. 16654 92d Cong., 2d Sess. (1972), the second Labor-HEW appropriations bill for fiscal year 1973, on October 27, 1972.

104 President Nixon attempted to impound funds appropriated under several education-related acts, including ESEA Title II, but was prevented from doing so by adverse court decisions. *See* State of Louisiana v. Weinberger, 369 F. Supp. 856 (E.D. La. 1973), People *ex rel.* Bakalis v. Weinberger, 368 F. Supp. 721 (N.D. Ill. 1973). Commonwealth of Pennsylvania v. Weinberger, 367 F. Supp. 1378 (D.D.C. 1973), State of Oklahoma v. Weinberger, 360 F. Supp. 724 (W.D. Okla. 1973).

105 Emergency Committee for Full Funding of Educational Programs, 300 New Jersey Ave. S.E., Washington, D.C.; registered lobbyist, Charles W. Lee; filed June 2, 1969. The Committee's particular legislative interest is educational funding within the annual Labor-HEW appropriations bills. *See* Vol. 25 CONG. Q. ALM., 91st Cong., 1st Sess. 1121 (1969).

106 *Educational Publishing Industry*, 44 WALL STREET TRANSCRIPT 36567 (1974). (There appears to be a typographical error: in light of the total budget, 6,024 billion should read 6.024 billion).

107 8 KNOWLEDGE INDUSTRY REPORTS, March 15, 1975, at 3.

was demonstrated in 1969 by the Institute for Educational Development (I.E.D.).[108] Using funds from the Carnegie Corporation and the Ford Foundation, the Institute studied the legal requirements which impede the selection, purchase, and introduction of educational materials. It concluded that the most restrictive constraints on materials selection are those regulating the length of time betwen adoptions of textbooks, and those prescribing the course of instruction.[109]

III. Legislation Mandating Learner Verification of Instructional Materials

A. *The California Textbook Market: A Century of Legislative Constraints*

For more than a century, textbook regulation in California has been rife with the type of restrictions cited by the Institute of Educational Development as most constraining publishers' access to the instructional materials market.[110] In 1849, the first Constitution of California established the Office of Superintendent of Public Instruction and delegated to the legislature the responsibility for promotion of intellectual, scientific, moral, and agricultural improvement.[111] During the next hundred years, the laws governing the public school system proliferated,[112] and by 1957, California had enacted more laws affecting textbook selection than any other state.[113]

Textbook selection power in California has been predominantly delegated to state officials or agencies. From 1853 to 1860, the Superintendent of Public Instruction, by law, recommended a uniform series of schoolbooks which school commissioners and

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108 Institute for Educational Development, Selection of Educational Materials in the United States Public Schools (ERIC Document ED 044030, 1969) [hereinafter cited as Selection of Educational Materials].

109 *Id.*, at 286.

110 *Id.*

111 Cal. Const. art. 9, §§ 1-2 (1849).

112 *See* Kunzi, *The Education Code*, in Cal. Educ. Code 101 (West 1975), for a commentary on the legislative enactments concerning education in the last century.

113 The closest competitors were Kansas, Texas, Indiana, West Virginia and Kentucky. *See* Hall, *supra* note 14 at 86-188.

teachers were required to use. In 1860, this power was delegated to a State Board of Education where it has remained in one form or another.[114] Today, the State Board of Education adopts a list of "textbooks and instructional materials" for elementary schools,[115] while district boards of education adopt "textbooks" for use in high schools.[116] This balance determines the points of entry into the market for instructional materials.

One of the major constraints on introduction of new materials to public schools has been the time period for which adopted materials must be kept in use.[117] In California, since 1866, schools have been required to use adopted materials for a period of at least four years.[118] They have been allowed to keep materials in use as long as eight years.[119] A second major constraint has been the numerous legislative prescriptions concerning curricula.[120]

Other important constraints on private entry into the California textbook market have been imposed by either the California Constitution or by statute. In 1884, the Constitution was amended to require the state to print textbooks, preferably those written by California authors. From 1891 until 1903, state law required that public schools use only state-printed books. In 1903 private publishers won a legislative concession permitting the State Board of Education to lease plates from publishers and pay royalties.[121] However, in 1913 a statutory preference for textbooks written, compiled, printed, and published in California again reinforced market constraints.[122] The legislature sought enforcement through penalties for school officers and teachers who acted as agents for publishers or who did not use state-printed textbooks, and for anyone who gave or accepted bribes to influence textbook purchases.[123]

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114 For a history of changes in textbook selection policies since 1860, see *id.* at 92-95.

115 CAL. EDUC. CODE § 9400 (West 1975).

116 *Id.* § 9600.

117 SELECTION OF EDUCATIONAL MATERIALS, *supra* note 108 at 286.

118 Hall, *supra* note 14 at 92-95. Between 1933 and 1957, the minimum adoption period was six years.

119 *Id.* at 92.

120 *Id.* at 92-95.

121 *Id.* at 93.

122 *Id.* at 95.

123 *Id.* at 93-95.

Despite these provisions inhibiting open, profitable, textbook market conditions, the sheer size of the California market guarantees continued attention from publishers and manufacturers.[124]

B. *Legislative Restructuring of the California Market for Instructional Materials*

The California legislature established a Joint Legislative Committee for the Revision of the Education Code in 1957.[125] During the next decade, partly as a result of the Committee's work, the legislature enacted a series of major revisions of the Education Code. These enactments covered a wide range of educational activities; they included the McAteer Act establishing compensatory education programs,[126] the Miller-Unruh Basic Reading Act of 1965,[127] a special mathematics improvement program,[128] special education for the gifted[129] and the handicapped,[130] a statewide program of achievement testing,[131] revised certification of professional employees,[132] and the Professional Development and Program Improvement Act of 1968.[133] In 1972, the work of the Committee led to extensive revision of Division 8 of the Education Code, entitled "Instructional Materials."[134] As part of this revision of Division 8, the legislature enacted a Learner Verification and Revision statute.[135]

The process of amending and developing the California Education Code was complicated by the fact that some of the major

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124 Hoffman, *supra* note 2 at 11. The estimated expenditures for instructional materials and equipment in public and private elementary and secondary schools for 1973-74 for the top five markets are: California, $209,909,000; New York, $194,856,000; Illinois, $119,098,000; Pennsylvania, $115,957,000 and Texas, $87,617,000. *See also* Crane, *supra* note 32.

125 Ch. 2419 [1957] CAL. STAT. 4173.

126 Ch. 900 [1963] CAL. STAT. 729; Ch. 1163 [1965] CAL. STAT. 2947.

127 Ch. 1233 [1965] CAL. STAT. 3086.

128 Ch. 1639 [1967] CAL. STAT. 3923.

129 Ch. 883 [1961] CAL. STAT. 2311.

130 Ch. 2165 [1963] CAL. STAT. 4535.

131 Ch. 994 [1961] CAL. STAT. 2638.

132 Ch. 848 [1961] CAL. STAT. 2211.

133 Ch. 1414 § 2 [1968] CAL. STAT. 2780.

134 Ch. 929 § 2 [1972] CAL. STAT. 1655. Division 8 contains: General Provisions, chapter 1; Elementary Instructional Materials, chapter 2; High School Textbooks, chapter 3; Obsolete Instructional Materials, chapter 4; and Special Programs, chapter 5.

135 CAL. EDUC. CODE §§ 9234, 9426, 9600 (1975).

elements of the public school system were governed not by statute, but by the state constitution. Until 1970, article 9, section 7 of the constitution dealt with the creation and duties of the State Board of Education, the selection, printing, and distribution of textbooks, establishment of county boards of education, and the certification of teachers by county superintendents and boards of education.[136] From 1884 until 1970, section 7 required textbooks to be "furnished and distributed by the state free of cost or charge" to all elementary school children, and provided for an adoption period of four years;[137] a 1911 amendment added the words "without any change or alteration whatsoever which will require or necessitate the furnishing of new books to such pupils."[138] The LVR concept of continual revision of instructional materials was incompatible with such a provision.

In 1968, the legislature attempted to repeal this section of the constitution, but the voters rejected the amendment.[139] Total repeal would have jeopardized the assurance of free textbooks. Two years later, the voters approved a modified amendment to the constitution which split section 7 into two shorter sections and deleted some of the requirements:

> Sec. 7. The Legislature shall provide for the appointment or election of the State Board of Education and a board of education in each county.
>
> Sec. 7.5. The State Board of Education shall adopt textbooks for use in grades one through eight throughout the State, to be furnished without cost as provided by statute.[140]

The constitution, as amended, assures that public elementary school students will receive free textbooks, but allows the legislature to decide whether the state or local tax base will bear the cost.[141] Furthermore, the legislature is free to decide how text-

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136 CAL. CONST. art. 9, § 7 (1884).

137 *Id.*

138 *Id.* (1911).

139 Proposed Cal. Const. amend. No. 30 (1968), rejected at the general election held Nov. 5, 1968 (CAL. CONST., SUPP. 1975, at 121 (note)).

140 CAL. CONST. art. 9, §§ 7-7.5.

141 To the extent that there is a disparity in local resources to fund the purchase of instructional materials, such a shift intensifies the problem of inter-district financial inequality currently under judicial attack. Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241.

books will be adopted, for how long, and whether they will be printed by the state.

One effect of the amendment is the removal of the constitutional barrier to legislation which might, as in the case of LVR, require more frequent changes in adopted textbooks. The 1972 amendments to the Education Code required publishers and manufacturers to develop plans for learner verification and revision of instructional materials.[142] State funding of textbooks was assured only until 1977.[143] The State Board of Education was required to select a greater variety of instructional materials,[144] a phrase now defined much more broadly than the term "textbook."[145] Elementary boards of education were given more discretion in selecting such materials.[146] Significantly, the periods of adoption were set from two to five years for elementary instructional materials,[147] and at "not less than three years" for high school textbooks.[148]

The history of textbook selection in California illustrates the constitutional and statutory barriers which may impede the introduction of new educational concepts. Many interests are affected by legislation concerning educational materials. Public school teachers want more control of the selection of the basic tools of their trade for several reasons: they are increasingly being held accountable, and they need the flexibility and discretion accorded to professionals who need to match their skills to changing conditions. Understandably, private textbook publishers want removal of legal constraints on their market, especially competition from state printers and long adoption periods which retard introduction of technological improvements. Local elementary boards of education desire the power to choose from a variety of instructional materials those which best suit their district goals. State legislators, on the other hand, may be willing to consider delegating more choice to local boards if some or all

142 CAL. EDUC. CODE § 9426 (West 1975).
143 *Id.* § 9446.
144 *Id.* § 9400.
145 *Id.* §§ 9221, 9221.3, 9221.5, 9222, 9222.3, 9223, 9224.
146 *Id.* § 9400(c).
147 *Id.* § 9465. This section was amended in 1973 to lengthen the period in which materials could be retained in use to six years. Ch. 647 § 6 [1973] CAL. STAT. 1192.
148 CAL. EDUC. CODE § 9603 (West 1975).

of the burden of financing such purchases could be shifted from the state tax base to that of local school districts. At the same time, they remain responsive to public demands for educational quality and accountability in return for tax dollars.

All these parties could agree that detailed regulation of public education would be more responsive to conditions if handled by statute instead of the constitution. Their converging concerns do not imply an action coalition, but suggest that the political climate may be conducive to change if the right "formula" can be found. In California, in 1972, that formula included an incipient form of LVR.

C. *The California LVR Statute*

1. Provisions

As amended in 1972, the California Education Code contains only three sections which refer to learner verification.[149] A related provision, section 9221, defines "instructional materials" as "all materials designed for use by pupils and their teachers as a learning resource and which help pupils to acquire facts, skills, or opinions or to develop cognitive processes."[150] They may be "printed or nonprinted and may include textbooks, educational materials and tests."[151] Although a broad definition, the use of the modifying phrase "designed for use" suggests that newspapers, magazines, and many materials not designed for classroom instruction would be outside the definition of instructional materials and, therefore, not subject to the LVR provisions.

Section 9234 defines "learner verification" as "the continuous and thorough evaluation of instructional materials for their effectiveness with pupils."[152] In section 9426, publishers and manufacturers are required "to develop plans to improve the quality and reliability of instructional materials through learner verification"[153] in accordance with rules and regulations of the State Board of Education. Section 9426 also requires that "[g]ov-

149 *Id.* §§ 9234, 9426, 9600.
150 *Id.* § 9221.
151 *Id.*
152 *Id.* § 9234.
153 *Id.* § 9426.

erning boards shall be encouraged to permit publishers and manufacturers to have limited access to classrooms for necessary testing and observation."[154] Initially, LVR requirements applied only to elementary instructional materials because sections 9234 and 9426 are part of chapter 2 of Division 8, which concerns only elementary materials.[155] Later the same year, however, an amendment to section 9600[156] extended these provisions to high school textbook adoption through incorporation by reference of section 9426.

2. Demands on Publishers and Manufacturers

The requirement imposed by section 9426 is, strictly speaking, only a demand that "[p]ublishers and manufacturers shall, in accordance with rules and regulations adopted by the state board, *develop plans* to improve the quality and reliability of instructional materials through learner verification" (emphasis added).[157] There is no explicit requirement that the plans be implemented. Furthermore, the section listing the information which must be submitted to the Curriculum Development and Supplemental Materials Commission before it makes recommendations to the State Board for adoption does not include these learner verification plans.[158]

The extension of requirements for learner verification of materials to high school adoptions under chapter 3 of Division 8 has greater impact because of a restriction on the power of district boards to adopt textbooks for use in high schools under their control: "Only textbooks of those publishers who comply with the requirements of . . . Section 9426 [learner verification] may be adopted by the district board."[159] Not all high school books, however, are necessarily involved because the State Board of Education is required to "designate the kinds of books which shall be classified as textbooks for the purposes of this [high school] chapter. Instructional materials not classified as text-

154 *Id.*
155 Ch. 929 § 2 [1972] CAL. STAT. 1657, 1661.
156 Ch. 1233 § 17 [1972] CAL. STAT. 2384.
157 CAL. EDUC. CODE § 9426 (West 1975).
158 *Id.* § 9422.
159 *Id.* § 9600 (1975).

books may be purchased by district boards without reference to the provisions of this chapter. . . ."[160]

Though the legislation on learner verification has been in effect nearly three years, the State Board of Education has not yet fulfilled its obligation to adopt "rules and regulations" to guide publishers and manufacturers. EPIE's efforts to assist the State Board in drafting regulations proved fruitless[161] and were followed by predictions that the state would probably settle for "deliberately vague" regulations.[162] The report of California's special Committee on Learner Verification (the Chunn Committee)[163] suggested stringent regulations which were strongly opposed by publishers at a recent meeting in New York City.[164] In addition, the draft regulations were criticized by the Lawyers' Committee project team,[165] which may try to develop alternative regulations.[166] In effect, no one knows how to implement the legislative mandate, and it is not surprising that the California State Department of Education is relying on large publishers with well developed research departments (such as Xerox,

160 *Id.* § 9601. Dr. Elaine Stowe of the California State Department of Education stated in an interview on April 14, 1975, that the State Board of Education uses the National Association of State Textbook Administrators' *Manufacturing Standards and Specifications for Textbooks* (Oct. 1971) as a guide for determining what books shall be classified as textbooks.

161 Komoski & Elliott, *supra* note 7.

162 Attributed to Clifton Garrett, Consultant to the California Assembly Education Committee, in comments to members of the Educational Media Producers Council, 17 Educ. U.S.A., Oct. 14, 1974, at 37.

163 C. Chunn, Chm., the Learner Verification Committee, *Preliminary Guidelines for Learner Verification*, (Jan. 1974) (Cal. State Dept. of Educ., Sacramento, Cal. [hereinafter cited as Chunn Guidelines].

164 The EPIE-inspired National Learner Verification and Revision Task Force met February 24, 1975 in New York City.

165 The Lawyers' Committee staff expressed particular concern that the Chunn Committee guidelines linked LVR to the selection process in a manner which seemed to imply that LVR results would be used to rank materials and that publishers would be obliged to compete for high LVR rankings. The link is made by the Chunn Committee's suggested "ratio of comparable competence," a calculated number designed to measure the success of an instructional material in meeting its stated goals with learners. The letter states that "the Guidelines implicitly intertwine learner verification and the purchase process: they make learner verification a matter of competition among publishers rather than a matter of each publisher complying with appropriate state standards. . . ." Letter from Hannah N. Geffert & Daniel M. Schember of the Lawyers' Committee for Civil Rights under Law, to Dr. Wayne Henderson, State Department of Education, Sacramento, Cal., Feb. 3, 1975 [hereinafter cited as Geffert & Schember].

166 Interviews with Lawyers' Committee staff members Jay Harper, II, on March 3, 1975 and Daniel Schember, in Cambridge, Mass., March 11, 1975.

McGraw Hill, and Holt, Rinehart and Winston) to supply some of the answers.[167]

3. Demands on School Districts

The second sentence of section 9426 provides that "[g]overning boards shall be encouraged to permit publishers and manufacturers to have limited access to classrooms for necessary testing and observation."[168] "Governing board" is defined as "board of school trustees, and city, and city and county board of education."[169] Since "[e]very school district shall be under the control of a board of school trustees or a board of education,"[170] this provision is aimed at local boards of education, but being phrased in the passive form, it is not clear who is to do the encouraging. The provision is vague in that neither "limited" nor "necessary" is defined, and the law does not indicate who has the power to make those definitions or what criteria are to be used. Sections 39, 921, and 9426 taken together can be read to conclude that the Legislature is suggesting that local boards of education cooperate with publishers and manufacturers to enable them to meet the requirements in the first sentence of section 9426, but the discretion remains with local boards, and the statute makes no provision to resolve the conflict if a publisher is unable to obtain access to classrooms on a voluntary basis.

Once the representatives of the publishers and manufacturers enter the classroom, their role might take several forms — observing, testing, interviewing, or even teaching. Neither the California statute nor the proposed guidelines adequately delimit the range of activities to be included in LVR.[171] Furthermore, neither the statute nor the proposed guidelines assign final responsibility for evaluating the fairness and adequacy of the publishers' LVR. The EPIE guidelines provided:

> Learner verification of a product is the producer's responsibility and the data gathered are the producer's property.

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167 Telephone interview with Dr. Elaine Stowe of the California State Department of Education April 14, 1975.

168 CAL. EDUC. CODE § 9426 (West 1975).

169 *Id.* § 39.

170 *Id.* § 921.

171 *Cf.* Komoski & Elliott, *supra* note 7 at 2; Chunn Guidelines, *supra* note 163 at 2.

> Education agencies have a responsibility to permit producers to gather data from schools and a responsibility to demand evidence that the producers are employing valid procedures of data gathering and analysis and that they are using the data to improve the effectiveness of their product.[172]

This statement appears to split responsibility between publishers and school districts. Publishers who already practice LVR have experienced difficulties assuring objectivity. Holt, Rinehart and Winston reports that it initially employed an independent agency to conduct its LVR but that so many difficulties resulted from the introduction of this third party to the dialogue between publisher and school system that the independent agency was removed from the communication process.[173]

Assuming that the extent of permissible activity for publishers in the name of LVR is clarified and that school districts voluntarily open their doors, the third and final sentence of section 9426 presents another substantial problem: "Publishers and manufacturers shall provide copies of test results and evaluations made as part of learner verification at the request of any governing board."[174] The pupils' right to privacy appears to be ignored. Not only the district which opened its doors, but any district may ask for information, and the law clearly mandates compliance by the publishers and manufacturers. The statute does not require the consent of parents or students who have reached the age of eighteen before information may be gathered or disclosed.

Less than three months after adoption of the LVR statute,[175]

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172 Komoski & Elliott, *supra* note 7 at 2.

173 Holt, Rinehart, & Winston, Inc., *supra* note 12, at 5-6. The intent was ". . . to add objectivity and reduce possible bias from the process, . . . [and] to add expertise that was not widely available (*e.g.*, testing specialists and computer analysts)." *Id.* at 6. Holt, Rinehart & Winston, Inc. remain committed to the use of outside experts to assure objectivity of the LVR process. Its Learner Verification Plans Report states:

> We have retained external consultants to review each stage of our research design and implementation, have arranged for independent observers to visit participating schools during the research process, and will arrange for the participation of independent consultants in the analysis of the data and the preparation of learner based research reports.

Id. at 6.

174 CAL. EDUC. CODE, § 9426 (West 1975).

175 Nov. 7, 1972.

the California Constitution was amended to make privacy an inalienable right:

> All people are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property; and pursuing and obtaining safety, happiness, and privacy.[176]

The effect of this constitutional amendment on students' rights is uncertain. It is necessary that the question of striking a balance between the student's right to privacy and the public's right to monitor LVR be openly confronted. This could be done in developing regulations to implement the LVR statute. Given the importance of the issue, however, it would be preferable for the legislature to resolve the conflict by amendment to the statute itself.

4. In-service Training of Teachers

The California LVR provisions do not mention in-service training of teachers, one aspect of learner verification and revision which is claimed to be integral to the process.[177] However, section 9425 concerns in-service training of teachers.[178] That section: a) requires publishers and manufacturers to offer in-service training in the use of their materials; b) requires other qualified persons or organizations to do the same; c) requires service to be provided in accordance with terms agreed to by the parties, *i.e.*, endorses contracts; d) allows district boards to pay for the service; and e) exempts publishers and manufacturers from penalties if the service is not free and the board does not want to pay for it. No penalty is provided in section 9425 or elsewhere in article 2 (Duties of Publishers and Manufacturers).[179]

The ambiguity of the reference to penalties in article 2 invites

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176 CAL. CONST. art. I, § 1.

177 Komoski, *Learner Verification: Touchstone for Instructional Materials*, EDUC. LEADERSHIP, Feb., 1974, at 399.

178 CAL. EDUC. CODE § 9425 (West 1975). Section 9425 may have been related to the Professional Development and Program Improvement Act of 1968, an act concerning in-service training which has subsequently been repealed. *See* Ch. 1414 § 2 [1968] CAL. STAT. 2785, *repealed by* Ch. 1499 § 16 [1974] CAL. STAT.

179 CAL. EDUC. CODE §§ 9420-9426 (West 1975).

disregard of that article's mandates. The only generally applicable penalty in Division 8 appears in section 9263;[180] it would require every board of education to order any publisher or manufacturer who does not offer in-service training for the use of all its instructional materials "to cease to offer or sell any instructional materials to that governing board."[181] Publishers and manufacturers who do not want to offer in-service training can, however, gain exemption from such orders by the simple expedient of pricing their materials and training separately. They can then set a price for their training programs which is unacceptable to boards of education. In the absence of any effective penalty, section 9425 does no more than permit district boards to contract with publishers and manufacturers or others for in-service training of teachers in the use of instructional materials, and permit expenditure of public funds for that purpose.

5. Enforcement Provisions

Only two penalty sections appear in all of the Division 8 statutes. The first is anomalous:

> Any governing board shall order any publisher or manufacturer who violates any provision of this division to cease to offer or sell any instructional materials to that governing board. If such an order is made, it shall be unlawful for that governing board to purchase or order instructional materials from such publisher or manufacturer.[182]

The governing board becomes the prosecutor, judge and jury, law enforcement officer; and it even becomes a potential criminal if it continues to "traffic" with the violator. If the board knows nothing of the violations and issues no order, the board may be in violation of the statute, but there is no penalty for such a violation. There seems little incentive to probe possible violations by the publishers, for it may be in a particular board's best interests not to know anything about a publisher's activities if that board wants to purchase the publisher's materials. It would have seemed wiser for the legislature to have chosen a less inter-

180 *Id.* § 9263.
181 *Id.*
182 *Id.*

ested agency than a local board of education to enforce the provisions. Furthermore, the statute provides inadequate standards by which to judge the publishers' performance, and fails to accord publishers any hearing rights, appeal procedures, or means of reinstatement if they later meet the requirements.

The second provision is more straightforward.[183] It makes bribery or acceptance of a bribe intended to influence the purchase of instructional materials a misdemeanor, and in addition, penalizes school officials with loss of office.

The three sections on LVR in the California statutes[184] contain a scant six sentences. This simplistic approach to a legislative mandate with such complex implications suggests one explanation for the failure to adopt regulations to implement the statutes in the nearly three years following their enactment. The tentative "mandate" of section 9426[185] and the absence of penalties related to enforcement of LVR indicate a cautious response to this innovation in education law.

D. *Florida: A Statutory Refinement of the LVR Mandate*

With a history of textbook selection as long as that in California,[186] Florida extensively revised its statutes on textbook selection procedures in June, 1974.[187] Accountability was a major concern of the legislature, which enacted extensive revision of the state's educational research and development program[188] and of the state assessment program[189] as well as an LVR statute.

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183 *Id.* § 9283.

184 *Id.* §§ 9234, 9426, 9600.

185 "Publishers and manufacturers shall . . . develop plans . . . ." *Id.* § 9426.

186 According to Hall, *supra* note 14 at 99-102, Florida established a uniform system of common schools in 1869, and gave the governing boards discretion concerning procurement of textbooks. Subsequently, the legislature required countywide textbook adoption in 1883, statewide uniform textbook adoption by the board of commissioners of state institutions in 1911, and statewide adoption of high school texts in 1917. In 1925, the state was directed to provide free textbooks for pupils in the first six grades, a mandate extended to all public elementary and secondary students by 1935.

187 The 1974 legislation provides for instructional materials councils nominated by the Commissioner of Education and appointed by the State Board of Education. The councils are now composed of four classroom teachers, a school board member and one other lay person and two supervisors of teachers. The Commissioner recommends annually the areas in which instructional materials shall be submitted for adoption. Ch. 74-337, [1974] FLA. STAT. 1065.

188 *Id.* § 15 at 1079.

189 Ch. 74-205, [1974] FLA. STAT. 579.

The 1974 amendment deleted the term "textbooks" throughout the selection statutes and replaced it with "instructional materials," which it defined as:

> . . . items that by design serve as a major tool for assisting in the instruction of a subject, course, or activity. These items may be available in bound, unbound, kit, or package form, and may consist of hard or softback textbooks, consumables, learning laboratories, slides, films and film strips, recordings, manipulatives, and other commonly accepted instructional tools.[190]

As in the California statute,[191] this definition is broad, but has a significant limitation in the words "by design serve as a major tool for assisting in the instruction." The "design" limitation appears in the statutes of both states, but the further modification in the Florida statute suggests that supplementary materials are not subject by law to LVR, provided they do not function as a "major tool."[192]

Other distinctions between the California and Florida statutes occur in the operation of the LVR sections. In California, the publishers and manufacturers are required only to develop plans for LVR,[193] and the requirement is not tied to the state adoption section.[194] By contrast, the Florida law requires that, prior to consideration of their wares for state adoption, publishers and manufacturers must submit "[w]ritten proof of the use of the learner verification and revision process during prepublication development and postpublication revision of the materials in question."[195]

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190 Ch. 74-337, § 1, [1974] FLA. STAT. 1068.

191 CAL. EDUC. CODE § 9221 (West 1975).

192 The requirement that instructional materials be learner verified and revised is applied only to those which are state adopted. It will not affect all materials in use because district school boards may use up to twenty-five percent of their state allocated instructional materials funds "for the purchase of instructional materials, including library and reference books not included on the state adopted list and repair and renovation of textbooks and library books." Ch. 74-337, § 13, [1974] FLA. STAT. 1079.

193 CAL. EDUC. CODE § 9426 (West 1975).

194 *Id.* § 9422.

195 Ch. 74-337, § 11, [1974] FLA. STAT. 1077, provides that publishers and manufacturers of instructional materials shall:

> (3) Submit, at a time designated in section 233.14, Florida Statutes, the following information: . . .

However, the Florida statute recognizes the need for time to adapt to the new requirements by allowing any publisher who cannot submit proof of LVR instead to "satisfy the state instructional materials selection council that he will systematically gather and utilize learner-verification data to revise the materials in question to better meet the needs of learners throughout the state."[196]

The Florida law imposes a more specific approach to the improvement of instructional materials than the vague language in the California law which loosely defines LVR as "continuous and thorough evaluation."[197] It provides:

> . . . learner verification is defined as the empirical process of data gathering and analysis by which a publisher of a curriculum material has improved the instructional effectiveness of that product before it reaches the market and then continues to gather data from learners in order to improve the quality and reliability of that material during its full market life.[198]

At this point, the statute makes special provisions waiving the requirement of proof of prepublication LVR in some cases. It

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(b) Written proof of the use of the learner verification and revision process during pre-publication development and post-publication revision.
of the materials in question. For purposes of this section learner verification is defined as the empirical process of data gathering and analysis by which a publisher of a curriculum material has improved the instructional effectiveness of that product before it reaches the market and then continues to gather data from learners in order to improve the quality and reliability of that material during its full market life. Failing such proof, if the publisher wishes to submit material for adoption, he must satisfy the state instructional materials selection council that he will systematically gather and utilize learner-verification data to revise the materials in question to better meet the needs of learners throughout the state. Such text revision should be interpreted as including specific revision of the materials themselves, revision of the teachers' materials and revision of the teachers' skill through retraining, it being the intent of the legislature that learner-verification and revision data shall include data gathered directly from learners and that such data may include the results of criterion-referenced and group-normed tests, direct learner comments, or information gathered from written questionnaires from individual or small group interviews, and not precluding the use of secondary data gathered from teachers, supervisors, parents, and all appropriate participants and observers of the teaching-learning process.

196 *Id.*

197 CAL. EDUC. CODE § 9234 (West 1975).

198 Ch. 74-337, § 11, [1974] FLA. STAT. 1077.

then continues: "Such text revision should be interpreted as including specific revision of the materials themselves, revision of the teachers' materials and revision of the teachers' skill through retraining. . . ."[199]

Because of the ambiguous ordering of these passages, it is unclear whether this last provision applies to all LVR, or only to postpurchase LVR of materials permitted to be sold without prior proof of LVR. In any case, the provision clearly calls for in-service training of teachers by publishers and manufacturers as an integral part of LVR;[200] this contrasts sharply with the tenuous link in the California law.[201] It appears likely that the Florida in-service training provision applies to all LVR because of the broader implications of the rest of the sentence:

> . . . it being the intent of the legislature that learner-verification and revision data shall include data gathered directly from learners and that such data may include the results of criterion-referenced and group-normed tests, direct learner comments, or information gathered from written questionnaires from individual or small group interviews, and not precluding the use of secondary data gathered from teachers, supervisors, parents, and all appropriate participants and observers of the teaching-learning process.[202]

The penalty for willful violation of the section of the Florida statute covering LVR[203] is appropriate only for violations concerning the pricing of instructional materials and is not suitable for enforcement of LVR. It is possible that the legislature made

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199 *Id.*

200 The importance of contact with teachers as a means for introducing new materials into the market can hardly be lost on the publishing industry. According to the Institute for Educational Development:

> [A]dvertising and information about products is more effective when it is reinforced by personal communications. . . . For many educational professionals, information is most effective when conveyed by a respected peer or colleague. Thus, educational personnel and salesmen, in that order, were regarded as the most important information sources by nearly all categories of respondents. Personal sources of information were considered by respondents to be more important than any form of nonpersonal information sources.

SELECTION OF EDUCATIONAL MATERIALS, *supra* note 108 at 292. *See also*, D. BEM, BELIEFS, ATTITUDES AND HUMAN AFFAIRS 75-77 (1970).

201 CAL. EDUC. CODE § 9425 (West 1975).

202 Ch. 74-337, § 11, [1974] FLA. STAT. 1077.

203 *Id.* at 1078, amending § 233.25(b)(12).

a conscious choice not to penalize failure to comply with the LVR provisions, but more likely that it simply failed to consider the suitability of the penalty provisions as a means to enforce LVR.

In common with California, the Florida Legislature ignored the students' rights to privacy and the classroom teachers' professional and academic freedom.

While more explicit and better articulated than the California statute, Florida's LVR legislation makes the same basic policy choices. Before following the lead of California and Florida, other state legislatures should study the implications of LVR for public education, and the alternatives which may merit prior consideration.

IV. Implications

The value of LVR is purported to lie in the systematic study of the manner in which instructional materials communicate to or teach students, what blocks such communication, and conversely what best communicates particular information, attitudes, or values to students. Theoretically, the LVR process offers hope for better instructional materials and improved learning. Mandating LVR by legislation attempts to insure the establishment and maintenance of minimum standards for evaluation and revision of such materials, and to make the concept of "accountability" integral to the learning process. LVR places responsibility on the textbook publisher to provide mechanisms for feedback from teachers and learners.

There are, however, some difficult questions raised. First, evaluating cognitive and affective learning is an imprecise art rather than a specific science, and it is unrealistic to assume that a single system, regardless of its refinement, will end ambiguity. In addition, the prerogative of the teacher to engage in spontaneous activity, even if it departs from standard curricular objectives, is important to the educational process; strict adherence to LVR might jeopardize that because non-adherence to the publisher's intended use of the materials introduces a variable which could confound the LVR process. Finally, LVR may not be a desirable

or effective evaluation instrument for all educational texts. There are, in addition, legal and financial considerations.

In assessing these problem areas, it is important to recognize that LVR affects the educational process in two distinct ways: by limiting the materials which may be used in public schools, and by bringing publishers' representatives into classrooms to conduct LVR projects.

It is difficult to estimate how many classrooms throughout the country may ultimately be involved in learner verifying materials. This will depend upon the sampling policies adopted by publishers which, in turn, may depend upon state regulations.[204] It will also depend upon the number of states which adopt LVR, and the differences in their statutory standards. If guidelines require wide population samples, or if different states impose different guidelines, the number of classrooms may be large and the impact upon teachers, students, and publishers correspondingly great.

A. *Programmatic vs. Creative Learning*

The process of LVR may include observation, testing, and data collection in the classroom;[205] this may not only involve extra work for the teacher, but could also disrupt classroom dynamics. The effective use of LVR may require some control over a teacher's classroom methods and, for at least the period in which a teacher is testing a product, that teacher's ability to improvise, revise, or extend the curriculum may be limited.[206] Even beyond

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204 In a telephone conversation April 14, 1975, Dr. Elaine Stowe of the California State Department of Education indicated that state regulations or guidelines of the LVR process have not yet been adopted in California. Florida also has not adopted guidelines. The guidelines proposed by the Chunn Committee in California stated, with reference to sampling and number of students to be tested: "The minimum respondents in any verification shall be one classroom of 30 pupils; more pupils, of course, may be tested in any program at the discretion of the publisher and school personnel. Control groups may be used also to reinforce validity" Chunn Guidelines, *supra* note 163 at 3. The guidelines state further that, "In the process of learner verification, the publisher, teacher, [Curriculum Development and Supplemental Materials] Commission, and evaluators should consider as many as possible of the following questions in order to test the validity of the process: . . . 2. Will [a] control group be used? 3. What sampling should be used? . . ." *Id.* at 6.

205 *See* note 7 and accompanying text.

206 In a memo dated March 4, 1975, Shirley McCune, staff member of the

the period of actual LVR, a requirement that schools purchase only materials which have been subjected to LVR may limit the teacher's ability to improvise or extend the curriculum.[207] Thus, extensive use of LVR could lead to rigidity.[208]

Furthermore, many educators believe that a significant component of classroom learning can result from spontaneous interaction between student and teacher.[209] Attempts to control or limit a teacher's instructional style may limit this spontaneous interaction and, perhaps, more than offset any increase in learning attributable to improved instructional format. It would be unfortunate if LVR proved a distraction from deeper explorations into the spontaneous interaction of the teacher with students, and the students with each other.

National Education Association (NEA), recommended that the NEA not endorse the Lawyers' Committee's first draft of LVR model legislation. In her analysis of the model code she states, "The required cooperation of teachers in learner verification opens the door to abuses of teachers' time and the use of public schools to carry out work for [the] publisher."

207 *Id.* McCune indicates the LVR model legislation would tend to "reduce the value and potential of informal teacher produced materials [and] [l]imit the range of materials."

208 *See* Holt, Rinehart, & Winston, Inc., *supra* note 12. The Report states the following concerns:

> It has become evident that "learner verification" raises a new set of expectations. Understandably, schools are concerned with providing the best possible learning environment for children, with guarding the confidentiality of student data, with preventing excessive additions to the workload of the teaching staff and with avoiding unnecessary disruption of school and classroom procedures. For the researcher conducting the learner based research study, on the other hand, essential concerns include consistency in methodology, comparability of data across sites, maintenance of data collection schedules, cost effective implementation, etc.

Id. at 7.

209 Heilman, Effects of an Intensive In-Service Program on Teacher's Classroom Behavior and Pupil's Reading Achievement (ERIC Document ED 003 359, Nov. 1965) at 2, states:

> The hundreds of studies which compare the efficacy of methods-materials have not resulted in any clear instructional mandate. Perhaps the inconclusive nature of research findings results from the fact that what the teacher does in the classroom has more impact on pupil growth in reading than does the prescribing or proscribing of instructional materials.

See also Carbonari, An Investigation of Relationships Among Instructional Mode, Teacher Needs, and Students' Personalities (ERIC Document ED 076 563, Feb. 1973). *See generally* Morrison, Teacher-Pupil Interaction in Elementary Urban Schools (ERIC Document ED 003 385, 1965). Morrison states that "the generalization of interpersonal feeling between teacher and pupil is the teaching factor that lies at the core of the classroom tone." *Id.* at 3.

The distinction between programmed and creative learning suggests that some forms of learning are more conducive to standardized evaluation than others;[210] some learning, particularly in the affective domain, may not be suitable for LVR at all.[211] The teacher and the student must retain the ability to engage in discovery learning, to deal with knowledge creatively, spontaneously and without the spectre of schedules, criteria and imposed external structures.[212] One solution may be to develop a more discriminating definition of "instructional materials" for purposes of LVR legislation. If the definition of instructional materials for purposes of learner verification were limited to those dealing with cognitive skills presented in a programmed or incremental format, the process of LVR could be more effectively and appropriately applied. In addition, by restricting the definition to those materials, such as basal texts in reading and mathematics, and programmed instruction materials, most amenable to improvement through LVR, the dangers of restricting other, more creative elements of learning could be minimized.

B. *Problems of Evaluation*

Unfortunately, there is little assurance that even the most rigorous application of LVR will, in fact, lead to increased learning on the part of students. In testimony before the House Subcommittee for Educational Development, Sidney Tickton of the

210 Thomas Murphy of Holt, Rinehart, & Winston, Inc. stated in a telephone interview on April 9, 1975 that programmed and incremental learning in such subjects as reading and math were more amenable to the LVR process than subjects which are less easily subdivided and serially arranged.

211 D. Krathwokl, B. Bloom and B. Masia distinguish five categories constituting the affective domain (hierarchically arranged):

1) receiving
2) responding
3) valuing
4) organization
5) characterization by a value or value complex.

Some educators hesitate to use affective measures for evaluating student performance (as part of a grading system) because of the inadequacy of assessment techniques, and the fact that local philosophical and cultural values are likely to regard one's beliefs, attitudes, values and personality characteristics as a private matter. *See* D. KRATHWOHL, B. BLOOM, B. MASIA, TAXONOMY OF EDUCATIONAL OBJECTIVES HANDBOOK II: AFFECTIVE DOMAIN 95 (1964).

212 *See* Morrison, *supra* note 209.

Academy for Educational Development, speaking of the effect of the use of educational technology in the classroom, stated that:

> In most of the cases, the student showed no significant difference in achievement from conventional classrooms. It has not been possible to say that if you use this piece of technology, or use this method, your students will achieve more. This is partly due to the fact that we are not too sure about what it takes to improve learning of the student. . . . We do not know how to measure improvement in learning.[213]

Because it is not presently possible to measure improvement in learning, there can be no assurance that LVR will, in fact, improve learning. This conclusion has been reached by staff members of the Lawyers' Committee. In a recent letter, they wrote that "the process of learner verification is incapable of leading to a determination, certification, or proving of instructional material reliability in terms of specific guaranteed levels of classroom performance."[214] Some publishers have observed that many subjects are not amenable to learner verification.[215] Reading, math and basic skill areas are relatively easy to learner-verify, but other subjects present significant obstacles.[216]

Moreover, this inability to insure improvement of learning through the use of learner-verified materials points to a possible weakness in the entire concept of legislated LVR. The legislative mandate of LVR could be construed in effect to require publishers to "validate" the results of their learner verification, that is, to prove that students can, in fact, learn from the materials.[217] There is little convincing evidence that enough is known about the learning process to "validate" learning methods or materials for use by the general public. Thus, a legislature which has mandated LVR could be requiring publishers to undertake a task that educators would be loathe to assume — to develop mechanisms which guarantee learning.

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213 *Hearings on H.R. 8838 Before the Select Subcomm. on Education of the House Comm. on Education and Labor*, 91st Cong., 2nd Sess., at 52 (Mar. 12, 1970).

214 Geffert & Schember, *supra* note 165, at 2.

215 *See* note 210 *supra* and accompanying text.

216 *See* discussion in text accompanying notes 205-212.

217 Komoski distinguishes validation from LVR on the basis that LVR is simply a mechanism for improving materials' effectiveness on the basis of feedback from students. *See* Remarks of Komoski, *supra* note 6 at 5-6.

Mandated LVR combined with prescriptive guidelines delimiting a specific evaluation process might also thwart research and development of potentially more productive methods of evaluating instructional materials, thus defeating the ultimate purpose of the LVR concept.

C. *Cost Effectiveness*

Generally, increased costs in generating a product are translated into increased cost to the consumer who purchases that product; the publishing industry is no exception. Implementation of LVR may make it necessary for publishers to hire psychologists to design tests, to set up testing programs in classrooms, to use programmers and computer time to correlate data, to hire statisticians to interpret the results, and to pay for travel time and expenses for any or all of the people involved in testing. One major publishing company which does business in California found that its annual expenditure for LVR more than doubled in the past year; in 1975 that company will spend approximately $140,000 for LVR.[218] Sources within the industry predict that substantial sums will be spent by consulting firms toward the development of LVR.[219]

This increased financial burden will inevitably be borne by the textbook purchasers, and ultimately by the taxpayers through federal, state, and/or local taxes.[220] Consumers should be aware that this is on the horizon, and that they will ultimately pay for LVR. Since there is no assurance that LVR can improve learning, it may be difficult to justify these increased costs.

Legislators should also be aware of the differential effects of LVR requirements on various publishers. In general, the LVR process will cost the same, whatever the publisher's volume of sales; consequently, the cost of LVR per unit could vary substantially according to the size of the publisher and the volume of sales of a particular material, placing larger publishers at a

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218 Interview material.

219 Interview material.

220 For a discussion of the provision of free textbooks, *see* Hall, *supra* note 14 at 68. Hall indicates that "[t]he concept that free public education should include the free use of textbooks is widespread in the United States today." *See, e.g.*, CAL. CONST. art. 9, § 7.5 (Supp. 1975); CAL. EDUC. CODE §§ 9280, 9621 (West 1975).

competitive advantage. Moreover, some of the largest publishers already practice LVR,[221] and would therefore suffer no financial burden if the process were legislatively mandated. In fact, such a mandate appears to be in their interest. A study conducted by the National Academy of Engineering for the U.S. Office of Education, "Issues and Public Policy in Educational Technology,"[222] after speaking favorably of LVR[223] and mentioning the California statute, concludes that laws demanding test results and uniform selection criteria will help unify the "chaotic educational technology marketplace."[224]

Other observers, however, have expressed concern that the educational materials industry is already overconcentrated.[225] The effect of LVR on smaller publishing firms could depend upon the exact guidelines adopted to regulate sampling techniques. If the guidelines require large population or geographic samples, small publishers with limited markets (particularly minority and women's presses) could be eliminated. On the other hand, if the guidelines allowed samples representative of specific markets, small publishers might be able to comply, while medium-sized publishers with thirty or forty products, aimed at nationwide markets, might find that their volume of sales could not support the expenses of national sampling.[226]

D. *Rights of Privacy*

The question of privacy for students and parents has not been considered in either the California or the Florida LVR statute.[227] It is not yet known if guidelines for those states will deal with

221 See note 12 *supra*.

222 National Academy of Engineering, *Issues and Public Policy in Educational Technology* (1974).

223 This is one of the few direct references to LVR found in the literature by the authors.

224 National Academy of Engineering, *supra* note 222 at 40.

225 General Electric sold General Learning Corporation to Scott Foresman in July, 1974, thus adding General Learning Corporation's 4-5% share of the market to Scott Foresman's 12-13% share. The ten largest publishing firms receive 57% of the revenues in the market for elementary and high school educational materials, and an even larger share of textbook revenues. *See* 8 KNOWLEDGE INDUSTRY REPORTS 3 (December 15, 1974).

226 *Cf.* RESEARCH AND DEVELOPMENT, *supra* note 73 at 36-37.

227 CAL. EDUC. CODE §§ 9234, 9426, 9600 (West 1975); Ch. 74-337, § 11, [1974] FLA. STAT. 1077.

the problem of invasion of privacy.[228] In general, publishers do not now collect data on students' names, but Holt, Rinehart and Winston, for instance, collects information on student achievement and ability, student self-concept, student level of interest in school and subject matter, classroom environment, teacher evaluation of the Holt, Rinehart and Winston program, teacher attitude toward instructional methodology, and teacher and student demographics.[229] Statistical variables such as I.Q., sex, etc. must be isolated and held constant in order to gain a strict measure of student interaction with instructional materials.[230] Auditing the accuracy and validity of the LVR process may require the inclusion of names and/or personally identifying information with the results.[231] At present, there is no evidence of misuse of

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228 As indicated, *supra* note 204, guidelines have not been adopted in California or Florida. The preliminary guidelines submitted by the Chunn Committee did not address the problem of invasion of privacy. The guidelines submitted by EPIE to the California Department of Education barely touched the topic of safeguarding privacy:

> *Necessary Safeguards*
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> In carrying out any studies in the schools, it is, of course, necessary to provide safeguards against the inappropriate use of the information that is gathered — for example, to publicly single out particular students, teachers, or schools as having performed poorly. Therefore, it will be necessary to follow the ethical principles of good behavioral science research in the learner verification process. It is especially important to protect the identity of individual respondents by summarizing findings in relation to *kinds* of learners, teachers, or school settings, rather than in relation to specific cases.

Komoski & Elliott, *supra* note 7 at 8.

229 Holt, Rinehart, & Winston, Inc., *supra* note 208 at 3.

230 The process of LVR seeks to determine the effectiveness of instructional materials being used by students. Thus, the other variables involved with or potentially affecting the learning process must be known and accounted for in order to measure the interaction between learner and instructional material alone. *See* Geffert & Schember, *supra* note 165 at 2.

231 The guidelines proposed by EPIE for California, *supra* note 7, suggested general criterion referenced measurement by the publisher in a pre-post-test design. The measurement would take place at two separate times. The first, cross-sectional measurement would "typically take place within one school semester or year and would provide the data necessary to begin Step III" (analysis of test data by the publisher). *Id.* at 11. The second, longitudinal measurement, "would be for the purpose of generating data on those aspects of the material's effect (and affect) which cannot adequately be evaluated after a short period of instruction (or, immediately following instruction for a semester or a year) . . . e.g., long-term retention, application to new situations, continuing progress along subsequent developmental stages, etc." *Id.* at 12. By definition a longitudinal study would require recording the names and/or personally identifiable information of the students involved in order to compare their performance across time.

confidential information by publishers,[232] but if the guidelines, or competition engendered by certain guidelines, require increasingly fine-grained data, more and more variables may have to be considered and more data collected about the students' (or teachers') personal lives and background.[233]

Students involved in prepublication testing of an academic program participate in an experimental program requiring increased testing, data collection, and observation. These programs can be exciting and rewarding for the students, but it is also possible that untried programs may adversely affect student achievement or psychological health. As the public becomes more concerned with student levels of achievement and the effects of testing, this may become a sensitive issue and publishers may encounter increased difficulty in implementing their LVR programs.

The involvement of publishers as outside agents obtaining and using personal information about individual students also conflicts with emerging national policies concerning student records and student privacy in an area that is fast becoming a sensitive political issue.[234] Title V of the Education Amendments of 1974[235] contains the Buckley Amendment,[236] which forbids federal funds from going to states or local school districts which fail to meet its standards of student privacy. The Buckley Amendment requires that schools give parents (and, in some cases, students themselves) the right to inspect[237] and challenge[238] all records

232 *E.g.*, interview material.

233 One possible danger to student privacy is that competition induced by the Chunn Committee Guidelines could cause a publisher who gets a relatively low ratio of comparable competence (an index employed in the Guidelines), and thus finds his sales endangered, to explain students' failure to learn adequately from his materials by statistically compensating for certain aspects of the students' family lives. This could lead to use of data on such things as parents' marital stability, morals, politics, etc.

234 The seriousness of the right to privacy is emphasized by Charles Fried:

> Privacy has become the object of considerable concern. The purely fortuitous intrusions inherent in a compact and interrelated society have multiplied. The more insidious intrusions of increasingly sophisticated scientific devices into previously untouched areas, and the burgeoning claims of public and private agencies to personal information, have created a new sense of urgency in defense of privacy.

Fried, *Privacy* 77 YALE L.J. 475 (Jan. 1968).

235 Act of August 21, 1974, Pub. L. No. 93-380, 88 Stat. 484 (1974).

236 20 U.S.C.A. § 1232g (Supp. Feb. 1975).

237 20 U.S.C.A. § 1232g(a)(1)(A) (Supp. Feb. 1975).

238 20 U.S.C.A. § 1232g(a)(2) (Supp. Feb. 1975).

pertaining to their children (or themselves). It also forbids schools to disclose such records, without the written permission of the parent, to anyone except specified school officials and certain other state and federal officials.[239] Unless publishers are able to qualify under the definition of eligible recipients of student data,[240] LVR requirements which do not provide for voluntary participation by individual students could directly conflict with the provisions of the Buckley Amendment, thereby jeopardizing the schools' rights to receive federal funds.

E. *Professionalism in Teaching*

Professionalism and autonomy are major issues to teachers today. The sense of professionalism among teachers is closely identified with individual choice, with freedom to modify and alter programs in response to pupil needs;[241] to impose a system which might suggest rigidity and conformity to external regulations could therefore conflict with teachers' concepts of their professional role. Mandated LVR carries the potential for requiring teachers to cooperate with outside researchers even though cooperation may mean taking actions in the classroom in opposition to the teacher's professional judgment. While such a threat to teachers could be alleviated by making participation in an LVR project voluntary on the part of individual teachers, the fact that there is currently an oversupply of teachers[242] suggests that teachers would still feel themselves under pressure to cooperate: the knowledge that other qualified applicants are always available could cause teachers to sacrifice their professional judgment to avoid being replaced for non-cooperation.

Large-scale interference with the teachers' authority to run

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239 20 U.S.C.A. § 1232g(b)(1) (Supp. Feb. 1975).

240 20 U.S.C.A. § 1232g(b)(1)(F) (Supp. Feb. 1975) [p. 496].

241 In a recent publication th National Education Association (NEA) states its belief that "a prime responsibility of professional associations is to stimulate significant improvements in the quality of instruction. Much of the responsibility to make educational changes should lie with the teachers through their influence and involvement in democratic decision making in and out of the school." NATIONAL EDUCATION ASSOCIATION, EDUCATIONAL ACTIONS 17 (1974) [hereinafter EDUCATIONAL ACTIONS].

242 For a discussion of teacher oversupply, *see* M. FRANKEL & J. BEAMER, PROJECTIONS OF EDUCATIONAL STATISTICS TO 1982-83 at 61-73 (1974) (DHEW Pub. No. (OE) 74-11105).

their own classrooms could precipitate difficulties with the teachers' unions.[243] The number of certified teachers in public schools represented by unions affiliated with one of the two national teachers' organizations, the American Federation of Teachers (AFL-CIO) and the National Education Association, continues to increase.[244] These organizations have already demonstrated their concern over LVR.[245] The National Education Association recommends research, development and field-testing of instructional materials by publishers[246] but also insists that the responsibility for educational changes lies with the classroom teacher.[247] In addition, the Association recommends "that professional educators enter into active collaboration with research and development specialists, both in regional educational laboratories and in industry, to promote technology's potential contribution to education by guiding the development of technology in the most educationally sound directions [and] it encourages school systems to establish learning materials centers."[248] Nonetheless, the Association insists:

> Decisions on which school learning experiences will develop a student's talents are best made by a teacher who knows the learner. Teaching quality depends on freedom to make such decisions. Teachers must select instructional materials without censorship. Challenges of the choice of instructional

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243 The National Education Association (NEA) and the American Federation of Teachers (AFT) have increasingly sought to inject issues of teacher autonomy into the collective bargaining process. For further discussion see M. Moskow, J. Lowenberg. E. Kozaria, Collective Bargaining in Public Employment; An Approach to School Administration (1970).

244 In 1970, the NEA reported approximately 1,100,000 members and the AFT reported a membership of 200,000. By 1974 the NEA's membership had grown to 1,444,000. For further discussion of union membership, *see* M. Lieberman & M. Moskow, Collective Negotiations for Teachers (1966); Educational Actions, *supra* note 241 at 9.

245 Representatives of the National Education Association and American Federation of Teachers took part in the National LVR Task Force, *supra* note 164. Shirley McCune of the NEA has recommended that the NEA not endorse the model LVR code of the Lawyers' Committee. *See* note 206 *supra*.

246 The NEA recommends "that the profession, in cooperation with other interested groups, establish standards for educational materials, and insist that publishers and producers use the services of a competent educational institution or facility to field test, in actual classroom situations, such materials, and publish the results of their effectiveness." Educational Actions, *supra* note 241 at 17.

247 *Id.* at 17.

248 *Id.*

> materials must be orderly and objective, under procedures mutually adopted by professional associations and school boards.
>
> The Association urges its affiliates to seek the removal of laws and regulations which restrict the selection of a diversity of instructional materials or which limit educators in the selection of such materials.[249]

Teachers' demands for such control over their classrooms are likely to increase to the extent that they are held accountable for their professional performance through evaluation.[250]

V. Alternatives to Current LVR Statutes

As a mechanism to improve instructional materials, LVR brings the benefits of systematic study to an important segment of the educational process. If freely chosen for its advantages, the risks are minimized. When government intervenes, the risk of rigidity increases, costs escalate, and large companies may dominate the regulatory process. If fifty states set bureaucratic machinery into motion through legislative mandates similar to those in California and Florida,[251] the cost in time, money, privacy and professionalism could outweigh any potential benefit. Each state will duplicate the process of regulation with endless variety and numerous conflicting demands on publishers. The result would be a market fractured into many jurisdictions, diminished economies of scale, and costly increases in lobbying, testing, red tape and, ultimately, the prices of instructional materials. There are alternatives to the single state initiative model. Informed choice, however, requires an answer to the anterior question: what is the problem requiring legislative action?

If the problem is phrased as one of lack of knowledge about the significance of instructional materials in the learning process, re-

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249 *Id.*

250 *See* note 66 *supra* and accompanying text.

251 The California and Florida LVR statutes provide an indirect incentive to other states. Section 9261 of the California Education Code and Section 233.25(5) of the Florida Revised Statutes provide that a publisher may not offer materials to other states at a price lower than that offered to schools in California and Florida. CAL. EDUC. CODE § 9261 (West 1975); Ch. 74-337, § 11, [1974] FLA. STAT. 1078. Legislators in other states may feel that they are being forced to pay for LVR through general price increases, and therefore seek to enact their own LVR statutes in order to gain a measure of control over the process.

search appears to make more sense than mandating LVR. The impact of educational materials on the teaching-learning process has not been fully explored,[252] and there is virtually no way to assess the costs and benefits of LVR. A 1969 study of the research and development practices of the instructional materials industry does not augur well for funding of basic research by publishers and manufacturers. The study concluded that "[m]ost of what constitutes research and development in the educational materials industries is either formal or informal market research."[253] Funding research to determine the significance of instructional materials in the learning process is more likely to be done by private foundations or federal and state governments.[254] Without a solution to this problem, no logical choices can be made concerning investment in LVR.

Another aspect of the problem involves a qualitative question: to what extent does LVR improve various kinds of instructional materials? The answer is elusive,[255] but crucial to the determination of the appropriate application of LVR. Funding research is likely to be a more efficient way to find the answer than indiscriminately requiring publishers and manufacturers to use the process on all instructional materials.

The problem has also been stated as one of consumer protection, but that focus fails to clarify the issue. In the case of the instructional materials market, the consumer is difficult to iden-

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252 RESEARCH AND DEVELOPMENT, supra note 73 at 2. C. Chunn, Learner Verification at 2, Jan. 1974 (Cal. State Dept. of Educ., Sacramento, Cal.) states: "M.W. Kirst and D. Walker in "An Analysis of Curriculum Policy Making" (*Review of Educational Research*, 41, 492, 1971) estimated that 75 percent of a child's classroom time and 90 percent of the homework time are spent using text materials." Kirst and Walker cite *Public Education in Texas*, a study by the Governor's Committee on Public Education (Austin, 1969), for these statistics. The Texas Department of Education could not locate the study on which it relied, so no assessment of the validity of the conclusion could be made for purposes of this article.

253 RESEARCH AND DEVELOPMENT, *supra* note 73 at 59.

254 Experiments, pilot projects, and demonstrations were well funded in the mid-1960's by government, foundations, and private industry, but did not yield the results expected concerning educational technology. *Id.* at 60. The I.E.D. report yielded the conclusion that ". . . the problems of research into research and development involve some of the most intricate and complex of all social phenomena. . . ." *Id.* at 60. The principal utility of this inquiry for those outside I.E.D. may lie in the recognition of how much is not known about the basic components of processes such as research and development, how much is taken for granted, and how much fundamental investigation remains to be done. *Id.* at 60, 61.

255 *See* text accompanying notes 213-216.

tify.[256] The people who select the materials may or may not be the ones who use them, and the users include children, teachers and, arguably, parents. To complicate the identification, those who choose and/or use the materials may or may not be the taxpayers who fund the purchases. Nevertheless, legislators are subject to over-simplified but politically appealing calls to action such as the following: "At this time of national concern over consumer protection, the largest single group of unprotected consumers is made up of the 50 million school children who are being required to learn from educational materials almost all of which have been inadequately developed and evaluated."[257]

There is little evidence that publishers and manufacturers have been challenged in court over the efficacy of their products by any of the purchasers or users.[258] Parents, however, frequently attack the content of instructional materials, an action which assumes that the materials effectively influence the education of the children.[259] When teachers are dissatisfied with particular materials, or the lack of appropriate materials, they frequently generate new textbooks and materials with which to teach, but despite urging from EPIE, they have not made their choices on

256 SELECTION OF EDUCATIONAL MATERIALS, *supra* note 108 at 309.

257 Komoski, *supra* note 1 at 337 (ED 059 612 at 4).

258 The authors' search of post-1967 case law in the area of textbooks failed to reveal litigation concerning whether materials have been tested with students.

259 The most recent controversy involved Kanawha County, West Virginia, where for nearly a year fundamentalist Alice Moore, mother of four, has battled for changes in the textbooks. Now a member of the Board of Education, she reportedly opposed the social studies series recently adopted for use in kindergarten through the sixth grade on the grounds that "she objected to any textbooks teaching Darwin's theory of evolution as fact." Charleston Gazette, April 4, 1975, 31 at 1. *Cf.* Epperson v. Arkansas, 393 U.S. 97 (1968). *See also* Wright v. Houston Independent School District, 486 F.2d 137 (5th Cir. 1973); Smith v. State, 242 So. 2d 692 (Miss. 1970). Sex education courses are also a common target. *See* Hobolth v. Greenway, 52 Mich. App. 682, 218 N.W.2d 98 (1974); Hopkins v. Hamden Bd. of Ed. 29 Conn. Sup. 397, 289 A.2d 914 (Conn. Com. Pl. 1971); Valent v. New Jersey State Bd. of Ed., 118 N.J. Super. 416, 288 A.2d 52 (N.J. Super. Ct. 1972); Medeiros v. Kiyosaki, 478 P.2d 314 (Hawaii 1970). By far the greatest number of challenges from parents are concerned with the duty of the board of education or state to provide textbooks without charge to students rather than the content of the materials. *See* Carpio v. Tucson High School Dist. No. 1 of Pima County, 111 Ariz. 127, 524 P.2d 948, (Ariz. 1974); Vandevender v. Cassell, 208 S.E.2d 436 (W. Va. 1974); Board of Ed. v. Sinclair, 65 Wis. 2d 179, 222 N.W.2d 143 (1974); Chandler v. South Bend Community School Corp., 312 N.E.2d 915 (Ind. App. 1974); Johnson v. New York State Ed. Dept., 449 F.2d 871 (2d Cir. 1971); Hamer v. Board of Ed. of School Dist. No. 109, 265 N.E.2d 616 (Ill. 1970); Bond v. Public Schools of Ann Arbor School Dist., 383 Mich. 693, 178 N.W.2d 484 (1970); Paulson v. Minidoka County School Dist. No. 331, 93 Idaho 469, 463 P.2d 935 (Idaho 1970).

the basis of whether the materials have been subjected to LVR.[260] These illustrations indicate the futility of a broad statement of the problem as one of consumer protection. Demanding uniformity of approach to the development and evaluation of instructional materials may not be an effective answer to a multi-faceted question. Legislation, to date, has required uniformity.

The whole matter could be left to market forces. EPIE and some state agencies assist purchasers of instructional materials by evaluating them on a number of dimensions. Adding a statement concerning the testing and revision of the material would give consumers one more factor to consider in their choices. Whether materials have been subjected to LVR would be weighed among many criteria for selection and its relative importance would be determined by the purchases of many consumers. The complexity of such decisions is one argument in favor of letting market choices determine levels of investment in LVR instead of using legislation to mandate a process and, coincidentally, allocation of resources to that activity.

State legislatures or Congress could aid consumers by requiring accurate and full disclosure by publishers and manufacturers of pertinent information concerning all testing procedures used and results obtained in the development and revision of the instructional material offered for sale. Truth in advertising would help consumers make discriminating choices.

Some publishers, concerned about the higher development costs associated with LVR at a time of economic recession and increased taxpayer resistance, may ask the question: will the increased costs of voluntary use of LVR place us at a competitive disadvantage?

One solution to this problem is to mandate by statute that all publishers and manufacturers use the LVR process on materials sold to the public schools. Although this approach appears to achieve uniformity, the burden on publishers is not equal. The process may cost the same, regardless of the quantity of the product sold, so the unit cost of LVR could vary widely.[261] Cost squeezes could accelerate concentration of the market in a few publishers and manufacturers.

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260 SELECTION OF EDUCATIONAL MATERIALS, *supra* note 108 at 287, 291-296.
261 *See* text accompanying notes 218-226 *supra*.

Other publishers might pose the problem differently: we want to improve our materials through LVR, but it is difficult and costly to encourage local school district cooperation in the process. State statutes which mandate cooperation from public schools may open the classrooms to the publishers and manufacturers, but at a risk of invading the privacy of students and compromising the professional integrity and academic freedom of teachers.[262] The very existence of a statute encouraging "cooperation" exerts pressure on teachers to acquiesce. Similarly, since students ordinarily have no choice about the extent of testing to which they will submit, their privacy may be compromised even by cooperation with publishers which has not been coerced by law. If the statute is drawn to require voluntary consent of the teacher and the parents (or students who have attained the age of eighteen), the publisher may have difficulty obtaining the permission of a sufficiently representative sample to conduct learner verification of materials in accordance with accepted principles of sampling.

Another problem concerns the range of materials subject to mandatory LVR. The California and Florida statutes create serious problems because of the breadth of their definitions of "instructional materials."[263] Any solution which legislatively mandates LVR should narrow its application to those materials for which it is best suited and most needed. To do otherwise may be to invite constant and serious disruption of the educational process.

Conclusion

A wise choice among competing alternatives requires public debate and conscious resolution. No legislature should accept claims of efficacy for learner verification and revision which have not been substantiated with well documented and replicated research. Too little is known about the significance of instructional materials in the learning process and even less is known either about the kinds of materials amenable to LVR, or about the most productive form of LVR. More information is needed about the cost of LVR in terms of investment of funds and time,

262 *See* text accompanying notes 227-250 *supra*.
263 *See* text accompanying notes 150-151 *supra* and notes 190-192 *supra*.

and the potential interference with the academic program, in order to balance such costs against the benefits of applying the process. The problem requires research; since it concerns a national market, cooperation which is national in scope would be most appropriate.

Two approaches offer a solution: the federal government could fund research designed to answer the questions, or the Education Commission of the States[264] might fund a project cooperatively supported by the 50 states. In either case, the results could form the basis for further action, preferably national in effect. If the research findings did not clearly support LVR, reliance on market decisions would be an appropriate solution. If LVR is found to be worthwhile, the various governmental agencies which fund the purchase of instructional materials could ban the use of such funds for materials which have not been subjected to LVR. States which adopt textbooks, or local school boards which perform that function, could ban the use of materials which have not been subjected to LVR to the extent research finds to be appropriate. Both actions assume enforcement through penalties.

Even if LVR is desirable, however, a mandatory approach may not be the best way to induce it. An alternative would be a "Gold Star" or "Seal of Approval" approach which would encourage action without reliance upon penalties and enforcement machinery. Federal, state or local authorities could recommend materials which have undergone LVR, recognizing that uniformity may not be crucial to the implementation of LVR and that other factors may be more important. For example, the particular market for a product may be too small to support LVR, or the materials may be uniquely creative and thus saleable whether or not they have been subjected to LVR.

The public interest may best be served by public funding of basic research on the pertinent problems and encouraging experimentation with evaluation procedures in the development of instructional materials. Premature legislative mandates of LVR inhibit the funding of alternatives. Unless carefully drafted, any LVR statute is likely to promote educational rigidity and induce greater concentration in the instructional materials industry.

264 *See* note 56 *supra*.

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The preceeding article is derived from a seminar organized by the Lawyers' Committee for Civil Rights Under Law and the Harvard Graduate School of Education. That seminar reviewed a draft model learner verification and revision statute prepared by the Lawyers' Committee under a grant from the National Institute of Education. A revised version of that model, including a range of alternative provisions has been published separately in the monograph, *Alternative Learner Verification and Revision Statutes*. Copies are available from the Lawyers' Committee for Civil Rights Under Law, 733 15th Street, N.W., Suite 520, Washington, D. C. 20005.

The National Institute of Education has reprinted this article in the belief that the article and the models, taken together, provide legislators and other education decision-makers with a wide range of options concerning quality control of instructional materials. For further information regarding the development of learner verification and revision legislation, contact the Model Legislation Project, Lawyers' Committee for Civil Rights Under Law at the above address.

For information concerning NIE activities in doctrinal and sociolegal research contact the Educational Adequacy Staff, Basic Skills Group, National Institute of Education, Washington, D. C. 20208.